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THE OLD CHRONICLE

Hand-painted Photogravure from the Painting by Eduard Grützner

The creator of this composition was actuated by an impulse suddenly formed while examining some antique records in Rome, the atmosphere of his environment being strongly suggestive of monkish incident and life. The painting, renowned for its faithful portraiture, is reproduced and shown here as an example of a study in the Middle Ages, before printing was in common use, as compared with the modern library, enriched with the accumulated wisdom of all time and freely accessible to even the poorest. The picture is instructive for its revelation of a phase of life many centuries ago, and it is a masterpiece of delineation.

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VOLUME II

HISTORY OF POLITICS AND ECONOMICS
HISTORY OF LAW
HISTORY OF RELIGION



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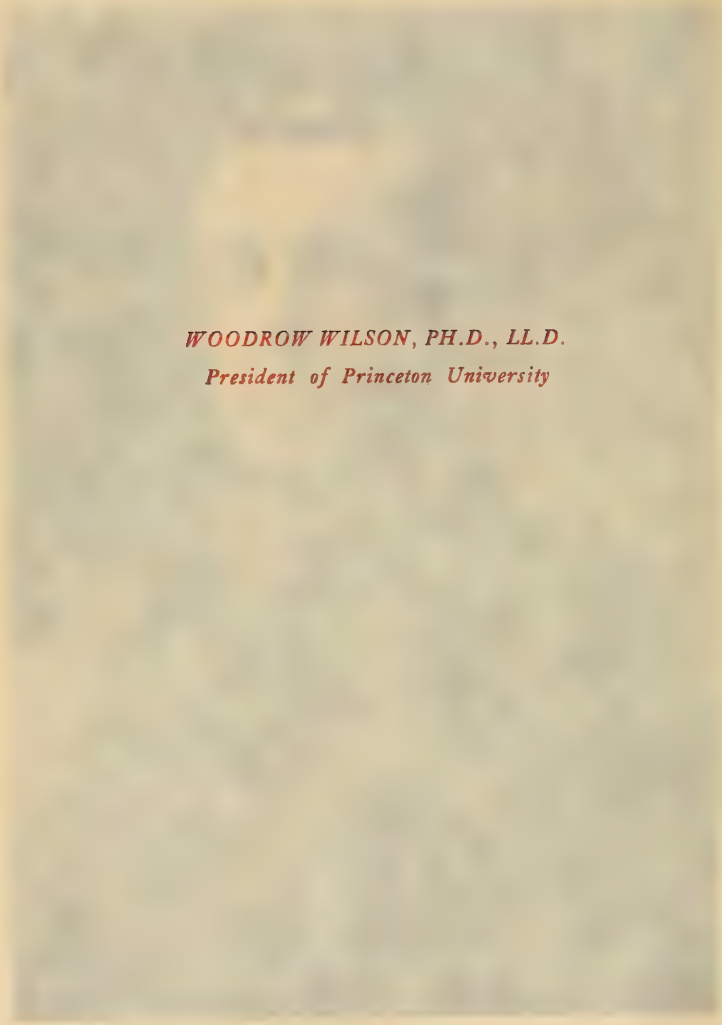
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WOODROW WILSON, PH.D., LL.D.

President of Princeton University

DIVISION B

HISTORICAL SCIENCE

DIVISION B — HISTORICAL SCIENCE

(*Hall* 3, *September* 20, 10 *a. m.*)

THE VARIETY AND UNITY OF HISTORY

BY WOODROW WILSON

[**Woodrow Wilson,** President of Princeton University. b. Staunton, Virginia, December 28, 1856. A.B. Princeton University, 1879; A.M. 1882. Ph.D. Johns Hopkins, 1886. Litt.D. Yale, 1901. LL.D. Wake Forest College, 1887; Tulane University, 1897; Johns Hopkins, 1901; Rutgers College, 1902; University of Pennsylvania, 1903; Brown University, 1903. Post-graduate, University of Virginia and Johns Hopkins University. Associate Professor History and Political Economy, Bryn Mawr College, 1885–88. Professor History and Political Economy, Wesleyan University, 1888–90. Professor Jurisprudence and Politics, Princeton University, since 1890. Member American Institute of Arts and Letters, American Historical Association, American Economic Association, American Academy Political and Social Science, American Philosophical Society, Southern History Association. Corresponding Member Massachusetts Historical Society. **Author of** *Congressional Government; An Old Master and Other Essays; George Washington; A History of the American People.*]

We have seen the dawn and the early morning hours of a new age in the writing of history, and the morning is now broadening about us into day. When the day is full we shall see that minute research and broad synthesis are not hostile but friendly methods, coöperating toward a common end which neither can reach alone. No piece of history is true when set apart to itself, divorced and isolated. It is part of an intricately various whole, and must needs be put in its place in the netted scheme of events to receive its true color and estimation; and yet it must be itself individually studied and contrived if the whole is not to be weakened by its imperfection. Whole and part are of one warp and woof. I think that we are in a temper to realize this now, and to come to happy terms of harmony with regard to the principles and the objects which we shall hold most dear in the pursuit of our several tasks.

I know that in some quarters there is still a fundamental difference of opinion as to the aim and object of historical writing. Some regard history as a mere record of experience, a huge memorandum of events, of the things done, attempted, or neglected in bringing the world to the present stage and posture of its affairs, — a book of precedents to which to turn for instruction, correction, and reproof. Others regard it as a book of interpretation, rather, in which to study motive and the methods of the human spirit, the ideals that elevate and the ideals that debase; from which we are to derive assistance, not so much in action as in thought; a record of evolution, in which we are not likely to find repetitions, and in reading which our inquiry should be of processes, not of precedents. The two views are not,

upon analysis, so far apart as they at first appear to be. I think that we shall all agree, upon reflection and after a little explanation of the terms we use, that what we seek in history is the manifestation and development of the human spirit, whether we seek it in precedents or in processes.

All of the many ways of writing history may be reduced to two. There are those who write history, as there are those who read it, only for the sake of the story. Their study is of plot, their narrative goes by ordered sequence and seeks the dramatic order of events; men appear, in their view, always in organized society, under leaders and subject to common forces making this way or that; details are for the intensification of the impression made by the main movement in mass; there is the unity and the epic progress of *The Decline and Fall*, or the crowded but always ordered composition of one of Macaulay's canvases; cause and effect move obvious and majestic upon the page, and the story is of the large force of nations. This is history embodied in "events," centering in the large transactions of epochs or of peoples. It is history in one kind, upon which there are many variants. History in the other kind devotes itself to analysis, to interpretation, to the illumination of the transactions of which it treats by lights let in from every side. It has its own standard of measurement in reckoning transactions great or small, bases its assessments, not upon the numbers involved or the noise and reputation of the day itself in which they occurred, so much as upon their intrinsic significance, seen now in after days, as an index of what the obscure men of the mass thought and endured, indications of the forces making and to be made, the intimate biography of daily thought. Here interest centres, not so much in what happened as in what underlay the happening; not so much in the tides as in the silent forces that lifted them. Economic history is of this quality, and the history of religious belief, and the history of literature, where it traces the map of opinion, whether in an age of certainty or in an age of doubt and change.

The interest of history in both kinds is essentially the same. Each in its kind is a record of the human spirit. In one sort we seek that spirit manifested in action, where effort is organized upon the great scale and leadership displayed. It stirs our pulses to be made aware of the mighty forces, whether of exaltation or of passion, that play through what men have done. In the other sort of history we seek the spirit of man manifested in conception, in the quiet tides of thought and emotion making up the minor bays and inlets of our various life of complex circumstance, in the private accumulation of events which lie far away from the sound of drum or trumpet and constitute no part of the pomp of great affairs. The interest of human history is that it is human. It is a tale that moves and quickens us.

We do not approach it as we approach the story of nature. The records of geology, stupendous and venerable as they are, written large and small, with infinite variety, upon the faces of great mountains and of shadowed cañons or in the fine shale of the valley, buried deep in the frame of the globe or lying upon the surface, do not hold us to the same vivid attention. Human history has no such muniment towers, no such deep and ancient secrets, no such mighty successions of events as those which the geologist explores; but the geologist does not stir us as the narrator of even the most humble dealings of our fellow men can stir us. And it is so with the rest of the history of nature. Even the development of animal life, though we deem its evolution part of ours, seems remote, impersonal, no part of any affair that we can touch with controlling impulse or fashion to our pleasure. It is the things which we determine which most deeply concern us, our voluntary life and action, the release of our spirits in thought and act. If the philosophers were to convince us that there is in fact no will of our own in any matter, our interest in the history of mankind would slacken and utterly change its face. The ordered sequences of nature are outside of us, foreign to our wills, but these things of our own touch us nearly.

It is the honorable distinction of historical writing in our day that it has become more broadly and intimately human. The instinct of the time is social rather than political. We would know not merely how law and government proceed but also how society breeds its forces, how these play upon the individual, and how the individual affects them. Law and government are but one expression of the life of society. They are regulative rather than generative, and historians of our day have felt that in writing political and legal history they were upon the surface only, not at the heart of affairs. The minute studies of the specialist have been brought about, not merely by the natural exigencies of the German seminar method of instruction, not merely by the fact that the rising tide of doctors' theses has driven would-be candidates for degrees to the high and dry places, after all the rich lowland had been covered, but also by a very profound and genuine change of view on the part of the masters of history themselves with regard to what should be the distinctive material of their study. Before our modern day of specialization there was virtually no history of religion, or of law, or of literature, or of language, or of art. Fragments of these things were, of course, caught in the web of the old narratives, but the great writers of the older order looked at them with attention only when they emerged, gross and obvious, upon the surface of affairs. Law was part of the movement of politics or of the patent economic forces that lay near the interests of government. Religion was not individual belief, but as it were the politics of an institution, of the church, which was but

the state itself in another guise. Literature concerned them only as it became the wind of opinion beating upon the laboring ship of state, or when some sudden burst of song gave a touch of imaginative glory to the domestic annals of the nation which was their theme. Art came within their view only when it was part of the public work of some Pericles or became itself part of the intricate web of politics, as in the Italian states of the Renaissance. Language concerned them not at all, except as its phrases once and again spoke the temper of an epoch or its greater variations betokened the birth of new nations.

And all this because their interest was in affairs of state, in the organized and coördinated efforts of the body politic, in opinions and influences which moved men in the mass and governed the actions of kings and their ministers of state at home and abroad. In brief, their interest was in "events." It is curious and instructive to examine what we mean by that much-used word. We mean always, I take it, some occurrence of large circumstance, — no private affair transacted in a corner, but something observed and open to the public view, noticeable and known, — and not fortuitous, either, but planned, concerted. There can, properly speaking, be no "event" without organized effort: it is not a thing of the individual. Literature is excluded, by definition, and art, and language, and much of religion that is grounded in unobserved belief, and all the obscure pressure of economic want. A history of "events" cannot be a history of the people; it can only be a history of the life of the body politic, of the things which statesmen observe and act upon.

The specialist has taught us that the deepest things are often those which never spring to light in events, and that the breeding-ground of events themselves lies where the historian of the state seldom extends his explorations. It is not true that a community is merely the aggregate of those who compose it. The parts are so disposed among us that the minority governs more often than the majority. But influence and mastery are subtle things. They proceed from forces which come to the individual out of the very air he breathes: his life is compounded as the lives of those about him are. Their lives play upon his, he knows not how, and the opinion he enforces upon them is already more than half their own. And so the analysis of the life of the many becomes part of the analysis of the power of the few — an indispensable part. It is this that the specialist sees. He sees more. He sees that individual effort as well as aggregate must be studied, the force that is in the man as well as the air that is in the community. The men who give voice to their age are witnesses to more things than they wot of.

Mr. Ruskin, in the preface to the little volume on Venetian art to which he has given the name *St. Mark's Rest*, propounds a theory

which will illuminate my meaning. "Great nations," he says, "write their autobiographies in three manuscripts, — the book of their deeds, the book of their words, and the book of their art. Not one of these books can be understood unless we read the two others; but of the three the only quite trustworthy one is the last. The acts of a nation may be triumphant by its good fortune; and its words mighty by the genius of a few of its children; but its art only by the general gifts and common sympathies of the race. Again, the policy of a nation may be compelled, and, therefore, not indicative of its true character. Its words may be false, while yet the race remains unconscious of their falsehood; and no historian can assuredly detect the hypocrisy. But art is always instinctive; and the honesty or pretense of it are therefore open to the day. The Delphic oracle may or may not have been spoken by an honest priestess, — we cannot tell by the words of it; a liar may rationally believe them a lie, such as he would himself have spoken; and a true man, with equal reason, may believe them spoken in truth. But there is no question possible in art: at a glance (when we have learned to read), we know the religion of Angelico to be sincere, and of Titian, assumed."

Whether we agree with all the *dicta* of this interesting passage or not, the main truth of it is plain. It is to be doubted whether the "genius of a few of its children" suffices to give a nation place in the great annals of literature, and literary critics would doubtless maintain that the book of a nation's words is as naïf and instinctive as the book of its art. Here, too, the sincere and natural is easily to be distinguished ("when we have learned to read") from the sophisticated and the artificial. Plainly the autobiography of Benjamin Franklin is separated by a long age from the autobiography of Benvenuto Cellini, and the one is as perfect a mirror of the faith of the man and the manner of the age as the other. But these questions are not of the present point. Undoubtedly the book of a nation's art and the book of its words must be read along with the book of its deeds if its life and character are to be comprehended as a whole; and another book, besides, — the book of its material life, its foods, its fashions, its manufactures, its temperatures and seasons. In each of these great books the historian looks for the same thing: the life of the day, the impulses that underlie government and all achievement, all art and all literature, as well as all statesmanship.

I do not say that the specialists who have so magnified their office in our day have been conscious of this ultimate synthesis. Few of them have cared for it or believed in it. They have diligently spent their intensive labor upon a few acres of ground, with an exemplary singleness of mind, and have displayed, the while, very naïvely, the provincial spirit of small farmers. But a nation is as rich as its subjects, and this intensive farming has accumulated a vast store of

excellent food-stuffs. No doubt the work would have been better done if it had been done in a more catholic spirit, with wider sympathies, amidst horizons. The broader the comprehension the more intelligent the insight. But we must not ask for all things in a generation or expect our own perfection by any other way than the familiar processes of development.

Perhaps we are near enough the time of synthesis and coördination to see at least the organic order and relationship of the several special branches of historical inquiry which have been grouped in this Division of our Congress. All history has society as its subject-matter: what we ponder and explore is, not the history of men, but the history of man. And yet our themes do not all lie equally close to the organic processes of society. Those processes are, of course, most prominent in political and economic history, least prominent, perhaps, in the history of language. I venture to suggest that the organic order is: Politics, economics, religion, law, literature, art, language. So far as the question affects religion and law, I must admit that I am not clear which of the two ought to take precedence, —in modern history, certainly law; but most history is not modern, and in that greater part which is not modern clearly religion overcrows law in the organic, social process.

I know that the word religion, in this connection as in most others, is of vague and mixed significance, covering a multitude of sins; but so far as my present point is concerned, it is easy of clarification. Religion, as the historian handles it, involves both a history of institutions, of the church, and a history of opinion. As a history of opinion it perhaps lies no nearer the organic processes of society than does the history of literature; but from the beginning of recorded events until at any rate the breaking up of foundations which accompanied and followed the French Revolution, it concerns the church as an institution as definitely as the history of politics, with its various records of shifting opinion, concerns the state, and the organic life of the body politic. In such a view, religion must take precedence of law in the organic order of our topics. From the remotest times of classical history, when church and state, priest and judge, were hardly distinguishable, through the confused Middle Age, in which popes were oftentimes of more authority than kings and emperors, down to the modern days, when priests and primates were, by very virtue of their office, chief politicians in the plot of public policy, the church has unquestionably played a part second only to the state itself in the organization and government of society, in the framing of the public life.

Law occupies a place singular and apart. Its character is without parallel in our list. It has no life of its own apart from the life of the state, as religion has, or literature, or art, or language. Looked at

as the lawyer looks at it, it is merely the voice of the state, the body of regulations set by government to give order to the competitive play of individual and social forces. Looked at from the historian's point of view, it consists of that part of the social thought and habit which has definitely formed itself, which has gained universal acquiescence and recognition, and which has been given the sanction and backing of the state itself, a final formulation in command. In either case, whatever its origin, whether in the arbitrary will of the lawmaker or in the gradually disclosed and accepted convenience of society, it comes, not independently and of itself, but through the mouth of governors and judges, and is itself a product of the state. But not of politics, unless we speak of public law, the smaller part, not of private, the greater. The forces which created it are chiefly economic, or else social, bred amidst ideas of class and privilege. It springs from a thousand fountains. Statutes do not contain all of it; and statutes are themselves, when soundly conceived, but generalizations of experience. The truth is that, while law gets its formulation and its compulsive sanction from the political governors of the state, its real life and source lie hidden amidst all of the various phenomena which historians are called upon to explore. It belongs high in the list I have made, because it so definitely takes its form from the chief organ of society.

To put literature before art in the organic order I have suggested, is not to deny Mr. Ruskin's *dictum*, that art more than literature comes "by the general gifts and common sympathies of the race," by instinct rather than by deliberation; it is only to say that more of what is passing through a nation's thought is expressed in its literature than in its art. As a nation thinks so it is; and the historian must give to the word literature a wider significance than the critic would vouchsafe. He must think not merely of that part of a nation's book of words upon which its authors have left the touch of genius, the part that has been made immortal by the transfiguring magic of art, but also of the cruder parts which have served their purpose and now lie dead upon the page, — the fugitive and ephemeral pamphlets, the forgotten controversies, the dull, thin prose of arguments long ago concluded, old letters, futile and neglected pleas, — whatever may seem to have played through the thought of older days.

Of the history of language I speak with a great deal of diffidence. My own study of it was of narrow scope and antedated all modern methods. But I know what interest it has for the historian of life and opinion; I know how indispensable its help is in deciphering race origins and race mixtures; I know what insight it affords into the processes of intellectual development; I know what subtle force it has had not only in moulding men's thoughts, but also their acts and

their aspirations after the better things of hope and purpose. I know how it mirrors national as well as individual genius. And I know that all of these data of organic life, whether he take them at first hand or at second, throw a clarifying light upon many an obscure page of the piled records that lie upon the historian's table. I fancy that the historian who intimately uses the language of the race and people of which he writes somehow gets intimation of its origin and history into his ear and thought whether he be a deliberate student of its development or not; but be that as it may, the historian of language stands at his elbow, if he will but turn to him, with many an enlightening fact and suggestion which he can ill afford to dispense withal. It is significant, as it is interesting, that the students of language have here been definitely called into the company of historians. May the alliance be permanent and mutually profitable!

My moral upon the whole list is, that, separated though we may be by many formal lines of separation, sometimes insisted on with much pedantic punctilio, we are all partners in a common undertaking, the illumination of the thoughts and actions of men as associated in society, the life of the human spirit in this familiar theatre of coöperative effort in which we play, so changed from age to age and yet so much the same throughout the hurrying centuries. Some of the subjects here grouped may stand high in the list of organic processes, others affect them less vigorously and directly; but all are branches and parts of the life of society. In one of the great topics we deal with there is, I know, another element which sets it quite apart to a character of its own. The history of religion is not merely the history of social forces, not merely the history of institutions and of opinions. It is also the history of something which transcends our divination, escapes our analysis, — the power of God in the life of men. God does, indeed, deal with men in society and through social forces, but he deals with him also individually, as a single soul, not lost in society or impoverished of his individual will and responsibility by his connection with the lives of other men, but himself sovereign and lonely in the choice of his destiny. This singleness of the human soul, this several right and bounden duty of individual faith and choice, to be exercised oftentimes in contempt and defiance of society, is a thing no man is likely to overlook who has noted the genesis of our modern liberty or assessed the forces of reform and regeneration which have lifted us to our present enlightenment; and it introduces into the history of religion, at any rate since the day of Christ, the master of free souls, an element which plays upon society like an independent force, like no native energy of its own. This, nevertheless, like all things else that we handle, comes into the sum of our common reckoning when we would analyze the life of men as manifested in the book of their deeds, in the book of

their words, in the book of their art, or in the book of their material arts, consumption, needs, desires; and the product is still organic. Men play upon one another whether as individual souls or as political and economic partners.

What the specialist has discovered for us, whether he has always discovered it for himself or not, is, that this social product which we call history, though produced by the interplay of forces, is not always produced by definite organs or by deliberation: that, though a joint product, it is not always the result of concerted action. He has laid bare to our view particular, minor, confluent but not conjoint influences, which, if not individual, are yet not deliberately coöperative, but the unstudied, ungeneraled, scattered, unassembled, it may be even single and individual expression of motives, conceptions, impulses, needs, desires, which have no place within the ordered, corporated ranks of such things as go by legislation or the edicts of courts, by resolutions of synods or centred mandates of opinion, but spring of their own spontaneous vigor out of the unhusbanded soil of unfenced gardens, the crops no man had looked for or made ready to reap. Though all soils from which human products suck their sustenance must no doubt lie within the general sovereignty of society, and no man is masterless in our feudal moral system, these things which have come to light by the labor of those who have scrutinized the detail of our lives for things neglected have not been produced within the immediate demesnes of the crown. Historians who ponder public policy only, and only the acts of those who make and administer law and determine the relationships of nations, like those who follow only the main roads of literature and study none but the greater works of art, have therefore passed them by unheeded, and so, undoubtedly, have missed some of the most interesting secrets of the very matters they had set themselves to fathom. Individuals, things happening obscure and in a corner, matters that look like incidents, accidents, and lie outside the observed movements of affairs, are as often as not of the very gist of controlling circumstance and will be found when fully taken to pieces to lie at the very kernel of our fruit of memory.

I do not mean to imply that the work of the specialist is now near enough to being accomplished, his discoveries enough completed, enough advertised, enough explained, his researches brought to a sufficient point of perfection. I daresay he is but beginning to come into his kingdom: is just beginning to realize that it is a kingdom, and not merely a congeries of little plots of ground, unrelated, unneighborly even; and that as the years go by and such studies are more and more clarified, more and more wisely conceived, this minute and particular examination of the records of the human spirit will yield a yet more illuminating body of circumstance and serve

more and more directly and copiously for the rectification of all history. What I do mean, and what, I daresay, I am put here to proclaim, is, that the day for synthesis has come; that no one of us can safely go forward without it; that labor in all kinds must henceforth depend upon it, the labor of the specialist no less than the labor of the general historian who attempts the broader generalizations of comment and narrative.

In the English-speaking world we have very recently witnessed two interesting and important attempts at synthesis by coöperation in Mr. H. D. Traill's *Social England* and Lord Acton's *Cambridge Modern History*, the one now complete, the other still in course of publication. We have had plans and proposals for a somewhat similarly constructed history of the United States. Mr. Justin Winsor's *Narrative and Critical History of America* hardly furnishes an example of the sort of work attempted in the other series of which I have spoken. Aside from its lists and critical estimates of authorities, it is only history along the ordinary lines done in monographs, covering topics every historian of America has tried to cover. Mr. Traill's volumes, as their general title bears evidence, run upon a wider field, whose boundaries include art, literature, language, and religion, as well as law and politics. They are broader, at any rate in their formal plan, than Lord Acton's series, if we may judge by the three volumes of the *Cambridge Modern History* already published. The chapter-headings in the Cambridge volumes smack much more often of politics and public affairs than of the more covert things of private impulse and endeavor. Their authors write generally, however, with a very broad horizon about them and examine things usually left unnoted by historians of an earlier age. The volumes may fairly be taken, therefore, to represent an attempt at a comprehensive synthesis of modern historical studies.

Both Mr. Traill's volumes and the *Cambridge Modern History* are constructed upon essentially the same general plan. The sections of the one and the chapters of the other are monographs pieced together to make a tessellated whole. The hope of the editors has been to obtain, by means of carefully formulated instructions and suggestions issued beforehand to their corps of associates, a series of sections conceived and executed, in some general sense, upon a common model and suitable to be worked in together as parts of an intelligible and consistent pattern; and, so uniform has been our training in historical research and composition in recent years, that a most surprising degree of success has attended the effort after homogeneous texture in the narrative and critical essays which have resulted; a degree of success which I call surprising, not because I think it very nearly complete, but because I am astonished that, in the circumstances, it should have been success at all and not utter failure.

It is far from being utter failure; and yet how far it is also from being satisfactory success! Allow me to take, as an example of the way in which these works are constructed, my own experience in writing a chapter for the volume of the *Cambridge Modern History* which is devoted to the United States. In doing so I am far from meaning even to imply any criticism upon the editors of that admirable series, to whom we are all so much indebted. I do not see how, without incredible labor, they could have managed the delicate and difficult business intrusted to them in any other way; and I am adducing my experience in their service only for the sake of illustrating what must, no doubt, inevitably be the limitations and drawbacks of work in this peculiar kind. I can think of no other way so definite of assessing the quality and serviceability of this sort of synthesis. I was asked by Lord Acton to write for his volume on the United States the chapter which treats of the very painful and important decade 1850–1860, and I undertook the commission with a good deal of willingness. There are several things concerning that critical period which I like to have an opportunity to say. But I had hardly embarked upon the interesting enterprise, which I was bidden compass within thirty of the ample pages of the Cambridge royal octavos, before I was beset by embarrassments with regard to the manner and scope of treatment. The years 1850–1860 do not, of course, either in our own history or in any other, constitute a decade severed from its fellows. The rootages of all the critical matters which then began to bear their bitter fruitage are many and complex and run far, very far, back into soil which I knew very well other writers were farming. I did not know what they would say or leave unsaid, explain or leave doubtful. I could take nothing for granted; for every man's point of view needs its special elucidation, and he can depend upon no other man to light his path for him. I therefore wrote a narrative essay, in my best philosophical vein, on the events of the decade assigned me, in which I gave myself a very free hand and took care to allow my eye a wide and sweeping view upon every side. I spoke of any matter I pleased, harked back to any transaction that concerned me, recking nothing of how long before the limiting date 1850 it might have occurred, and so flung myself very freely, — should I say very insolently? — through many a reach of country that clearly and of my own certain knowledge belonged to others, by recorded Cambridge title. How was I to avoid it? My co-laborers were not at my elbow in my study. Some of them were on the other side of the sea. The editors themselves could not tell me what these gentlemen were to say, for they did not know. The other essays intended for the volume were on the stocks being put together, as mine was.

I must conjecture that the other writers for that volume fared as

I did, and took the law into their own hands as I did; and their experience and mine is the moral of my criticism. No sort of cunning joinery could fit their several pieces of workmanship together into a single and consistent whole. No amount of uniform type and sound binding can metamorphose a series of individual essays into a book. I may be allowed to express my surprise, in passing, that some individual historians should have tried to compound and edit themselves in the same way, by binding together essays which were conceived and executed as separate wholes. The late Mr. Edward Eggleston furnished us with a distinguished example of this in his *Beginners of a Nation*, whose chapters are topical and run back and forth through time and circumstance without integration or organic relation to one another, treating again and again of the same things turned about to be looked at from a different angle. And if a man of capital gifts cannot fuse his own essays, or even beat and compress them into solid and coherent amalgam, how shall editors be blamed who find the essays of a score of minds equally intractable? No doubt the Cambridge volumes are meant for scholars more than for untrained readers, though Mr. Traill's, I believe, are not; but even the docile scholar, accustomed of necessity to contrast and variety in what he pores upon and by habit very patient in reconciling inconsistencies, plodding through repetitions, noting variations and personal whimsies, must often wonder why he should thus digest pieces of other men's minds and eat a mixture of secondary authorities. The fact is, that this is not synthesis, but mere juxtaposition. It is not even a compounding of views and narratives. It is compilation. There is no whole cloth, no close texture, anywhere in it. The collected pieces overlap and are sometimes not even stitched together. Events — even events of critical consequence — are sometimes incontinently overlooked, dropped utterly from the narrative, because no one of the writers felt any particular responsibility for them, and one and another took it for granted that some one else had treated of them, finding their inclusion germane and convenient.

But if we reject this sort of coöperation as unsatisfactory, what are we to do? Obviously some sort of coöperation is necessary in this various and almost boundless domain of ours; and if not the sort Mr. Traill and Lord Acton planned, what sort is possible? The question is radical. It involves a great deal more than the mere determination of a method. It involves nothing less than an examination of the essential character and object of history, — I mean of that part of man's book of words which is written as a deliberate record of his social experience. What are our ideals? What, in the last analysis, do we conceive our task to be? Are we mere keepers and transcribers of records, or do we write our own thoughts and judgments into our narratives and interpret what we record? The ques-

tion may be simply enough asked, but it cannot be simply answered. The matter requires elaboration.

Let us ask ourselves, by way of preliminary test, what we should be disposed to require of the ideal historian, what qualities, what powers, what aptitudes, what purposes? Put the query in another form, more concrete, more convenient to handle: how would you critically distinguish Mommsen's *History* from a doctor's thesis? By its scope, of course; but its scope would be ridiculous if it were not for its insight, its power to reconceive forgotten states of society, to put antique conceptions into life and motion again, build scattered hints into systems, and see a long national history singly and as a whole. Its masterly qualities it gets from the perceiving eye, the conceiving mind of its great author, his divination rather than his learning. The narrative impresses you as if written by one who has seen records no other man ever deciphered. I do not think Mommsen an ideal historian. His habit as a lawyer was too strong upon him: he wrote history too much as if it were an argument. His curiosity as an antiquarian was too keen: things very ancient and obscure were more interesting to him than the more commonplace things, which nevertheless constitute the bulk of the human story. But his genius for interpretation was his patent of nobility in the peerage of historians; he would not be great without it; and without it would not illustrate my present thesis.

That thesis is, that, in whatever form, upon whatever scale you take it, the writing of history as distinguished from the clerical keeping of records is a process of interpretation. No historical writer, how small soever his plot of time and circumstance, ever records all the facts that fall under his eye. He picks and chooses for his narrative, determines which he will dwell upon as significant, which put by as of no consequence. And that is a process of judgment, an estimation of values, an interpretation of the matter he handles. The smaller the plot of time he writes of, the more secluded from the general view the matters he deals with, the more liable is he to error in his interpretation; for this little part of the human story is but a part; its significance lies in its relation to the whole. It requires nicer skill, longer training, better art and craft to fit it to its little place than would be required to adjust more bulky matters, matters more obviously involved in the general structure, to their right position and connections. The man with only common skill and eyesight is safer at the larger, cruder sort of work. Among little facts it requires an exceeding nice judgment to pick the greater and the less, prefer the significant and throw away only the negligible. The specialist must needs be overseen and corrected with much more vigilance and misgiving than the national historian or the historian of epochs.

Here, then, is the fundamental weakness of the coöperative histories of which I have spoken by example. They have no wholeness, singleness, or integrity of conception. If the several authors who wrote their sections or chapters had written their several parts only for the eye of one man chosen guide and chief among them, and he, pondering them all, making his own verifications, and drawing from them not only but also from many another source and chiefly from his own lifelong studies, had constructed the whole, the narrative had been everywhere richer, more complete, more vital, a living whole. But such a scheme as that is beyond human nature, in its present jealous constitution, to execute, and is a mere pleasing fancy, — if any one be pleased with it. Such things are sometimes done in university seminars, where masters have been known to use, at their manifest peril, the work of their pupils in making up their published writings; but they ought not to have been done there, and they are not likely to be done anywhere else. At least this may be said, that, if master workmen were thus to use and interpret other men's materials, one great and indispensable gain would be made: history would be coherently conceived and consistently explained. The reader would not himself have to compound and reconcile the divergent views of his authors.

I daresay it seems a very radical judgment to say that synthesis in our studies must come by means of literary art and the conceiving imagination; but I do not see how otherwise it is to come. By literary art, because interpretation cannot come by crude terms and unstudied phrases in writing any more than pictorial interpretation can come by a crude, unpracticed, ignorant use of the brush in painting. By the conceiving imagination, because the historian is not a clerk but a seer: he must see the thing first before he can judge of it. Not the inventing imagination, but the conceiving imagination, — not all historians have been careful to draw the distinction in their practice. It is imagination that is needed, is it not, to conceive past generations of men truly in their habit and manner as they lived? If not, it is some power of the same kind which you prefer to call by another name: the name is not what we shall stop to discuss. I will use the word under correction. Nothing but imagination can put the mind back into past experiences not its own, or make it the contemporary of institutions long since passed away or modified beyond recognition. And yet the historian must be in thought and comprehension the contemporary of the men and affairs he writes of. He must also, it is true, be something more: if he would have the full power to interpret, he must have the offing that will give him perspective, the knowledge of subsequent events which will furnish him with multiplied standards of judgment: he should write among records amplified, verified, complete, withdrawn from the mist of

contemporary opinion. But he will be but a poor interpreter if he have alien sympathies, the temperament of one age when writing of another, it may be contrasted with his own in every point of preference and belief. He needs something more than sympathy, for sympathy may be condescending, pitying, contemptuous. Few things are more benighting than the condescension of one age for another, and the historian who shares this blinding sentiment is of course unfitted for his office, which is not that of censor but that of interpreter. Sympathy there must be, and very catholic sympathy, but it must be the sympathy of the man who stands in the midst and sees, like one within, not like one without, like a native, not like an alien. He must not sit like a judge exercising exterritorial jurisdiction.

It is through the imagination that this delicate adjustment of view is effected, — a power not of the understanding nor yet a mere faculty of sympathetic appreciation, or even compounded of the two, but mixed of these with a magical gift of insight added, which makes it a thing mere study, mere open-mindedness, mere coolness and candor of judgment cannot attain. Its work cannot be done by editorship or even by the fusing of the products of different minds under the heat of a single genius; its insight is without rule, and is exercised in singleness and independence. It is in its nature a thing individual and incommunicable.

Since literary art and this distinctive, inborn genius of interpretation are needed for the elucidation of the human story and must be married to real scholarship if they are to be exercised with truth and precision, the work of making successful synthesis of the several parts of our labors for each epoch and nation must be the achievement of individual minds, and it might seem that we must await the slow maturing of gifts Shakespearean to accomplish it. But, happily, the case is not so desperate. The genius required for this task has nothing of the universal scope, variety, or intensity of the Shakespearean mind about it. It is of a much more humble sort and is, we have reason to believe, conferred upon men of every generation. There would be good cause to despair of the advance of historical knowledge if it were not bestowed with some liberality. It is needed for the best sort of analysis and specialization of study as well as for successful synthesis, for the particular as well as for the general task. Moreover, a certain very large amount of coöperation is not only possible but quite feasible. It depends, after all, on the specialists whether there shall be successful synthesis or not. If they wish it, if it be their ideal, if they construct their parts with regard to the whole and for the sake of the whole, synthesis will follow naturally and with an easy approach to perfection; but if the specialists are hostile, if their enthusiasm is not that of those who have a large aim and view, if they continue to insist on detail for detail's sake and

suspect all generalization of falseness, if they cannot be weaned from the provincial spirit of petty farmers, the outlook is bad enough, synthesis is indefinitely postponed. Synthesis is not possible without specialization. The special student must always garner, sift, verify. Minute circumstance must be examined along with great circumstance, all the background as well as the foreground of the picture studied, every part of human endeavor held separately under scrutiny until its individual qualities and particular relations with the rest of the human story stand clearly revealed; and this is, of necessity, the work of hundreds of minds, not of one mind. There is labor enough and honor enough to go around, and the specialist who puts first-rate gifts into his task, though he be less read, will not in the long estimate of literature earn less distinction than the general historian. It is a question of the division and coöperation of labor: but it is more; it is also a question of the spirit in which the labor is done, the public spirit that animates it, the general aim and conception that underlies and inspires it.

As a university teacher I cannot help thinking that the government of the matter is largely in the hands of the professors of history in our schools of higher training. The modern crop of specialists is theirs: they can plant and reap after a different kind if they choose. I am convinced that the errors and narrownesses of specialization are chiefly due to vicious methods and mistaken objects in the training of advanced students of history in the universities. In the first place, if I may speak from the experience of our American universities, students are put to tasks of special investigation before they are sufficiently grounded in general history and in the larger aspects of the history of the age or nation of which they are set to elaborate a part. They discover too many things that are already known and too many things which are not true, — at any rate, in the crude and distorted shape in which they advance them. Other universities may be happier than ours in their material, in the previous training of the men of whom they try to make investigators; but even when the earlier instruction of their pupils has been more nearly adequate and better suited to what is to follow, the training they add is not, I take the liberty of saying, that which is likely to produce history, but only that which is likely to produce doctors' theses. The students in their seminars are encouraged, if they are not taught, to prefer the part to the whole, the detail to the spirit, like chemists who should prefer the individual reactions of their experiments to the laws which they illustrate.

I should think the mischievous mistake easy enough of correction. It is quite possible to habituate students to a point of view, and to do so is often, I daresay, the best part of their preparation. When they come to the advanced stage of their training, at which they are

to be set to learn methods of investigation, they should not be set first of all to the discovery or elaboration of facts, to the filling in of the hiatuses easily and everywhere to be discerned, by their preceptors at any rate, in the previous study of detail. They should, rather, be set to learn a very different process, the process of synthesis: to establish the relations of circumstances already known to the general history of the day in which they occurred. These circumstances should not all be political or economic or legal; they should as often concern religion, literature, art, or the development of language, so that the student should at once become accustomed to view the life of men in society as a whole. Heaven knows there is enough original work waiting to be done in this kind to keep many generations of youngsters profitably employed. Look where you will in the field of modern monographs, and it is easy to find unassociated facts piled high as the roofs of libraries. There is not a little fame as well as much deep instruction to be got out of classifying them and bringing them into their vital relations with the life of which they form a part. It were mere humanity to relieve them of their loneliness. After they had been schooled in this work, which, believe me, some one must do, and that right promptly, our advanced students of history and of historical method would be ready to go on, if it were only after graduation, after the fateful doctor's degree, to the further task of making new collections of fact, which they would then instinctively view in their connection with the known circumstances of the age in which they happened. Thus, perhaps thus only, will the spirit and the practice of synthesis be bred.

If this change should be successfully brought about, there would no longer be any painful question of hierarchy among historians: the specialist would have the same spirit as the national historian, would use the same power, display the same art, and pass from the ranks of artisans to the ranks of artists, making cameos as much to be prized as great canvases or heroic statues. Until this happens history will cease to be a part of literature, and that is but another way of saying that it will lose its influence in the world, its monographs prove about as vital as the specimens in a museum. It is not only the delightful prerogative of our studies to view man as a whole, as a living, breathing spirit, it is also their certain fate that if they do not view him so, no living, breathing spirit will heed them. We have used the wrong words in speaking of our art and craft. History must be revealed, not recorded, conceived before it is written, and we must all in our several degrees be seers, not clerks. It is a high calling and should not be belittled. Statesmen are guided and formed by what we write, patriots stimulated, tyrants checked. Reform and progress, charity and freedom of belief, the dreams of artists and the fancies of poets, have at once their record and their source with us.

We must not suffer ourselves to fall dull and pedantic, must not lose our visions or cease to speak the large words of inspiration and guidance. It were a shame upon us to drop from the ranks of those who walk at the van and sink into the ranks of those who only follow after, to pick up the scattered traces of the marching host as things merely to pore upon and keep. We cannot do this. We will return to our traditions and compel our fellow historians of literature to write of us as of those who were masters of a great art.

DEPARTMENT III

POLITICAL AND ECONOMIC HISTORY

POLITICAL AND ECONOMIC HISTORY

(*Hall* 4, *September* 20, 11.15 *a. m.*)

THE SCIENCE OF HISTORY IN THE NINETEENTH CENTURY

BY WILLIAM MILLIGAN SLOANE

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THE scientific study of history seeks to find in the past the means of determining both the evolution occurring under our eyes and the probabilities of the future. No preconception may distort the facts; but, the facts once determined, they may not be considered except in the light of reason. This by the rhetorical figure of "anticipation" we call, the Science of History. There is no claim that as yet this is other than an empirical science: we hope that one day it may become fairly complete; exact, within certain limits. Freeman, Morley, Acton; Comte, Renan, Taine; Waitz, Ranke, Mommsen,—these are some of the men who during the century just past have labored to make history scientific. One and all they ridiculed the wild exaggeration of mere reason as the final arbiter, apart from the affections, the imagination, and the moral sense; one and all they distrusted the "vague and sterile philanthropy," which is so often a plague to normal social conditions. Freethinkers as were most of them, yet, liberal and orthodox alike, they believed in the merits and benefactions of the Christian Church as a vital factor in their science. In their catholic spirit they were truly scientific.

It is assumed that the scientific study of history has entirely displaced history as literature; or literary history, as many style it. There have, indeed, been many men of light and learning, whose style and trained imagination have transmuted history into literature: there have been others who sought, even in the study of texts and in the interpretations of philology, to secure the material of novels, tales, or poetry, to find examples for the inspiration and consolation of

contemporary life. For such works the public has a passion, and no wonder; with the delight of literature we seem to combine learning and education. We savor and love the mixture of fact, philosophy, and poetry; the invention, the charm, the power. Yet this is not and never was history; something perhaps higher, but not history. There may even be literary science; but for all that science is not literature nor literature science. These twain cannot be made one flesh. Each may modify the other, but there is no transmutation.

For the scientific study of history we must have minds subtle, conscientious, and accurate — minds with a power and aptitude for minutiae, with a patience and endurance which know no bounds, honest minds incapable of even self-deception, and in particular with the linguistic gift that makes no language impossible of acquisition or foreign to the learner's aptitudes. Only for the mind thus equipped can history and philology be scientific. The generations of men endowed with the imaginative faculty have seen and will ever see, in the labors of such minds, the most splendid form of applied art, the highest known form of prose literature possibly, but certainly the nearest approach to scientific history that can be made.

In ours as in other disciplines there is trouble; and the trouble, as elsewhere, arises among the men who are destitute, or nearly so, of the imaginative power which is so well designated as the scientific imagination. Honest men of this sort, proud of their devotion and accuracy, become pedantic, claim infallibility, and despise all others: in the presence of the most august of all terrestrial things, — the origins, rise, and evolution of a state, the supreme social unit, — the mere investigator secures no large view but becomes a stern, contemptuous materialist. Only worse than these are the ignorant and impatient, who disdain the accuracy of truth, and are indifferent to the orderly arrangement of facts: the chain of causation in human affairs they can neither understand nor appreciate, being dazzled by speculation, imagery, and rhetoric. Shallow and inaccurate, they prate about history as literature, and deny the possibility of a science of history.

In the closing years of the nineteenth century there was much strife about the question as to whether or not there could be science in history. The question now is: How much science and of what kind is there in history? As some help toward a reply, we are forced to an historical retrospect of the efforts to secure and apply a method.

The eighteenth century is by many regarded as the period when history was born anew into the realm of science. The reason given is that it coincided with the final overthrow of ecclesiasticism, and the chief names adduced in proof are these of Vico (1668–1744), Gibbon (1737–94), Voltaire (1694–1778), and Burke (1729–97). It was felt that humanity was, if not its own first cause, at least its own demi-

urge, and men were determined to discover, if possible, what were the processes by which mankind had formed itself and made its home. Without a doubt there was for this reason a passionate study of nature, and it may have been a necessary complement that both the statics and dynamics of social phenomena were examined with a new purpose and from a new angle. But in spite of all efforts to establish this contention and to trace an historical continuity in the science of "historics" from then until now, there lie athwart the argument difficulties so portentous and so serious as almost if not entirely to vitiate its conclusions.

It is true that Vico was the first to ask why, if there be a science of nature, we have no science of history? It is consequently true that he was the first historical evolutionist. To him the story of a nation was the record of an ever completer realization in fact of certain remnants of a pre-natal revelation, of the primitive concrete notions of justice, goodness, beauty, and truth: the development, as he phrased it, of this poetic wisdom into the occult wisdom of law and government, into the realization of abstract and impersonal justice, was for him the subject-matter of history. This was a sublime idea, pregnant with great possibilities. But its author could not see the conclusions. Conceiving of three stages — divine, heroic, and human — he announced three corresponding civilizations, ending in an unstable democracy, whence society abandoned to license always relapses into barbarism, only to emerge once more by a law of cycles into a renewal of the process. This, of course, is a flat denial of progress. Moreover Vico never had a glimpse, much less a vision, of scientific order in history beyond the record of a single folk, and never conceived of general history in a scientific aspect. For these reasons he was a prophet without honor, either contemporaneous or posthumous, and left no influence behind to mould either his own or succeeding ages.

The method which Voltaire announced was alike more simple and more scientific. It was based on the theory that most details of history are mere baggage, and that when the lumber of the antiquary, as Bolingbroke called it, is disengaged from capital events, you may study in these last the vital human power and its workings. Wars, diplomacy, and the personal minutiae of the political hierarchy, he relegated to the garret of the chronicler and collector: laws, arts, and manners, he conceived to be the essentials of history. Equipped with this doctrine, he turned to account such portions of his time as he could spare from literature, politics, and attacks on ecclesiasticism to the composition of philosophical history. By the sheer force of historic doubt he destroyed many a myth, by the seductions of a graceful style and the stings of a biting sarcasm he relegated the millinery of human life to the rummage chambers where it belongs,

and finally in his great essay on manners he drew the plan and established the proportions for a concept of unity in history which in another land and age was destined to revolutionize the pursuit.

Either he never knew or he had forgotten a vital point. Jejune and embryonic as Aristotle's *Politics* appear when applied to our problems, his experience having been confined to the petty states of Greece, he nevertheless found and set forth the vital principle of society as an organism. On this were based the ancient concepts of economics. The embryo of modern economics was begotten by Jean Bodin (1580), a lawyer of the sixteenth century, who formulated the ideas of progress, law, and causation in history. Had he combined with his own thoughts (*Methodus ad facilem Historiarum Cognitionem*) the one great thought of Aristotle, he would have been even more famous than he is, he would have been the father of scientific history as well as of scientific economics. His objective, external attitude toward history was that of all the great, down to the nineteenth century; it was the basic concept and starting-point of Bossuet, of Vico, of Bodin, and even of Montesquieu. It was likewise the radical vice of Voltaire, as in a still higher degree it was that of Gibbon. The foundations of the social union may not be studied in collections of historical, legal, or even social facts, nor in brilliant generalizations therefrom, like those which cause the pages of Montesquieu to flash and scintillate. The true science of history shows us not merely the operations, what has been called the "play and function" of the social organs, it exhibits under the scalpel the organs themselves. Negative criticism has its rights, no doubt, but it is scanty fare for the hungry soul, and the idea of constructive, productive criticism was far better developed in Thucydides than in Voltaire; the most that can be said of the latter is that he saw in a glass darkly the concept, not of the unity of history, but of European history as a totality.

What then of Gibbon; has he too been weighed in the balances and found wanting? His erudition was immense, his pen facile and powerful, his grasp gigantic and his method sound. Let us apply the supreme test. Do scholars read him? or, if they read him, is it for any other motive than a learned curiosity? They copiously correct and annotate him, and freely explore the mazes of his thought: they conspire with publishers to issue new editions of his books, and the public buys edition after edition; but so likewise do they buy edition after edition of Rollin's *Universal History!* The sets look well on the shelves, but the man who reads either is hard pressed to kill time. There is more light thrown on the *Decline and Fall* by the short treatise of Fustel than by all the ponderous and erudite rhetoric of Gibbon. We have gleaned, not a few, but many facts, which Gibbon had not, even though the truth of fact is on all his pages; his method struggles to combine the ideas of evolution and of organism, but

his logic is after all felt to be futile and his conclusions antiquated. Like the other historians of his epoch, though the movement of his style is like that of the Roman triumph, he has not left to the world a "possession forever." Scholars can find all his information elsewhere, the use he makes of it they neither admire nor approve. Readers of discrimination have better use for their time than to peruse the pages of an unsympathetic formalist, the eulogist of heathen effeminacy, an apologist for pagan morality.

In truth, the eighteenth century is very remote from the nineteenth. The same facts no longer wear the same faces, and another method has gradually supplanted that which, though respectable, was nevertheless outworn. A restless evolution renews during every few generations all history in all its aspects, and never halts in the process. It is the fiat that history must be rewritten as knowledge grows, as epoch succeeds epoch. This is because readers have lived; have lived themselves into a world that is new scientifically and psychologically, and which has perspectives of which the past knew nothing. Viewed from the heights of our modern achievements in learning, the vaunted historical science of the eighteenth century, method and all, seems little better than a dangerous pseudo-science like phrenology or astrology.

The first reaction against what was after all a phantom, stately though it were, sprang rather from feeling than from knowledge; it was a rebound of logic and not of reason. This premature revolt is probably best illustrated in the case of Niebuhr. Though powerful, the mind of the great Danish diplomat was dry and disdainful: contemptuous of the practical and judicial. In his field of ancient history he substituted for painstaking research and for concrete reasoning a method based on gratuitous assumptions, a method which destroyed traditional reality, to erect in its place a baseless fabric of credulous negations. It has been the task of his successors, beginning with Mommsen and ending with Taine's fine treatise on Livy, to dissipate his airy structure of so-called analytic criticism. Considerate as they have been, they have left upright only a very few of his original contentions, and these the least important, wherewith to uphold, for shame's sake, the vanishing renown of his name. The indications of archæological discovery at this hour all point to the ultimate annihilation of every principle and position which he enunciated. Could his shade be seen strolling to-day across the excavated Roman Forum, and its crowding reflections be recorded for our benefit, the muttered syllables of its *vanitas vanitatum* would instruct our generation how superior is even the older notion of history as a compound of poetry and philosophy to the substitute, which merely dissects and compares abstractions, which begets negations and brings forth only specious presumptions.

It will appear, I think, on dispassionate examination, that the beginning of fruitfully scientific study in history, the initiation of the modern method, is to be found in Heeren. Unlike Niebuhr, he builded with new materials. Beginning as a philosopher, he applied in ancient history the Socratic method, and discovered that the states of antiquity could be understood only in the light of their institutions and their politics. Entering on a profound investigation of these, he found them so interlaced with their foreign relations that he examined under compulsion both Greece and Rome in their connection alike with Egypt and with Carthage. Even with the imperfect information of the time, he brought to light the momentous principle of mutation as dependent not merely on outward form but on internal structure (morphology). His is the vital notion of comparing contemporary histories in short periods, as opposed to the elucidation of single ones in long succeeding cycles of time. For this is essential to our later doctrine of the unity of history, without which no true science of the same, however rudimentary, is at all possible. With a consciousness of this grand truth as probably applicable to every period of history, he essayed it in the following epochs and evolved the concept which, revolutionary then, is now the corner-stone of modern history, that of the state-system of Europe, the basis upon which Macaulay erected the great reputation which he deserves. It may be asserted of Heeren now, as was hinted by a French critic in his lifetime, that he avoided every pitfall into which cumbrous thoroughness throws its German votaries, and escaped every trap which over-confident logic sets for its acrobatic French disciples.

The fine sense of limit and proportion exhibited by Heeren were in glaring contrast to the shoreless ocean of speculation on which both Herder and Hegel were sailing almost simultaneously. Alike they taught that the earthly realization of reason in history is a necessity, that whether by men, or in spite of man, all obstacles are leveled until humanity, freed from every hindrance, realizes the divine ideal. Alike therefore they landed on the quicksands of what may be to some a buoyant, but is to most a very gloomy fatalism, as the only basis for progress, being alike unmindful of Kant's almost self-evident but nevertheless glorious declaration that progress is a moral product purely. From the position of these transcendentalists the thought which has dominated the latter years of the nineteenth century, that of the pure evolutionists, does not essentially budge one jot: both are fatalistic. The latter, it is true, have a concept of progress antipodal to that of their predecessors. They likewise assume, somewhat rashly it seems in the present state of physics, that the laws of science are fixed and immutable; in particular, the taproot of the system, the doctrine of the conservation of energy, seems to

sit uneasily on crumbling and refractory shale instead of burrowing ever deeper into fertile soil.

It is in the application of this very doctrine that their theory of history emerges. To them it appears that energy being constant and indestructible in the social as in the physical order, every dynamic element works necessarily to associate itself with others, forming under internal influence, by integration an organism ever more and more complex. Simultaneously and subsequently goes on the process of disintegration, each element disassociating itself from others under external influence, and forming again with other and like busy elements new composites, which in turn inaugurate the next stage of evolution and devolution, of progress and decadence. While these philosophers fail to find the secret of purpose and procedure, yet they never entirely abandoned teleology, and some at least have lately returned to it as essential to their thought, for advance seems to them stronger than retreat, constructive stronger than destructive force.

The history of philosophy shows that every cycle of thought ends in some phase of materialism. There is at this hour such a school of Augustuluses, and they have been fairly influential in high places. They have unraveled evolutionary logic into what is an absurdity and are loosing the slight hold they have had for a time. Theirs is not the agnosticism which is a state of suspended judgment, but the firm conviction of the obscurantist, denying the right of generalization as to fact or principle, scorning the notion of ethical values in history. They reunite the vicious circle, joining hands with Froude and scoffing at the idea of science in history, even of an empirical science. For them history is but a mosaic of details, without design or outline, like some cathedral windows in England; patched and assembled from the shreds to which iconoclasts reduced the glorious and glowing paintings which, by color and orderly arrangement, once conveyed noble and exalting thought. These are the haughty disciples of the monograph, the apostles of the "unprinted," the missionaries of chaos. In the wilderness they seek to create, their voice is heard but not heeded. Generous youth has a fine instinct in the matter of barren nonsense. There is science in the sections of the biologist and in the preparation of them, but neither the one nor the other is the science of biology. We are grateful to these painstaking antiquarians for their materials, but we cannot accept the materials in place of the finished edifice.

Fortunately there has been a saner evolution than this. On Bacon's great principle have stood those who guide and advance it; the principle, namely, that it is the honor and the glory of history to trace causes and their combination with effects. The most commanding characters of history, like men of common mould, suffer the compulsion of circumstances which they cannot control. It must

be admitted and duly emphasized that there is a mystery, a nature of things, which runs with and athwart human purpose; that there is a cosmic order, pregnant with a train of events that are inevitable; there are relation, proportions and links in affairs and in men, which are predetermined. This, when disengaged from the documents, is what has been designated the weft or texture of history. Thereon is drawn and embroidered by man the enduring picture which is the historical record. This is the view of history which lays emphasis neither on collective nor on individual man, but on the personal and race conscience alike and in equal proportion. The law of moral progress has always imposed itself on societies, and always will, just in proportion as individuals *will* that it shall, and labor without cease for the purpose.

It was a great saying which Kant uttered when he said: By struggle and effort ought all human faculties to perfect themselves; moral progress is antecedent to all other forms and the source of them; besides, the conquests of each generation are the capital of the next, so that the sole condition of human perfectibility is the establishment of a civil society founded on justice. The determination to realize existence more completely, to struggle for the ideal, to aspire higher — the larger the number in every society who so feel it, and so behave, the more completely will be overcome the apparently insuperable obstacles to advance, the bondage of the past over the present, the restriction of each people by its contemporaries, the powerful solidarity of habit, of creed, and of inertia among men.

This is the view of historical science which, whether right or wrong, was characteristic of the nineteenth century in all its best and most fruitful work: the recognition of the evolutionary movement, the exhibition of the uses to which men put it; the display of its organic integration, the proof of its external disintegration by moral forces; the sloughing of refuse, the renewal of vital powers. This doctrine may not pretend to the high scientific quality of some others, but somehow it satisfies the master workmen and gratifies the aspirations, instincts, and convictions of readers far better than any other. It is the view which still controls the spiritual and intellectual activities of the best men in the highest civilizations. Neglecting the philosophical "impasse" of liberty and necessity, it satisfies the requirements of an imperious demand; that for the tangible results of human experience.

The fruits of science being both a means of enjoyment and a guide to conduct, our attention has naturally been monopolized by the marvelous achievements of physical science. This is incorrect and unjust; the advance and the results of the humanistic sciences have been equally remarkable. The polymath of the eighteenth century, with his unorganized masses of uncouth learning, would to-day be

a deformed monstrosity, so far has erudition spread its field and so profound are the investigations of scholars. The comparative method, without which modern science of any sort would be impossible, is itself an invention of the humanists. And I have heard the greatest devotees of pure science in our time yearn for a comparative historian of their disciplines. The entire success of scientific history is due to the achievements of the ancillary sciences; as revolutionary in method and results as either physics, chemistry, or biology. In particular, history is the hopeless and grateful debtor of comparative sociology, philology, and mythology, of comparative religions, folklore and ethnology; and above all of comparative archæology. One winter spent on the Nile examining the unbroken and unfalsified record of 10,000 years in human evolution under external influences is worth to the student all the metaphysics of history, even when indited by the genius of a Hegel.

By this vast erudition the work of the historian has become such that a division of labor is essential. There must be specialists in each and all of these ancillary sciences, and the historian must use their results as his matter. It has become the categorical imperative of scientific history that it should avail itself of its own wherever found. In this way we have reached what would otherwise have been inaccessible, viz., certain definitions of the task. We have defined the limits, we have fixed the basis, we have as was shown in another connection proved the unity, and we have consequently found the scientific method of history. This is neither the time nor the place further to discuss these, but they are realities. Without these definitions the advance of the nineteenth century would have been as futile as that of the eighteenth.

Let us turn and illustrate these contentions in considering four great names of our epoch: perhaps not the greatest, but types at least of the best in four great lands. The names are those of Macaulay, Ranke, Taine, and Bancroft. Once and for all let us say of each and every one of them that he was a man of immense erudition; of perfect good faith; of enormous, tireless, patient industry; of trained and chastened intellect; fully aware of the canons of historical science and determined to use them in his work. Each of them, moreover, marks a stage and a quality of advance, which are not merely noteworthy, but essential to our purpose.

The greatest German and the greatest French historians have paid homage to Macaulay as certainly the foremost English historian, as possibly the greatest of all historians since Thucydides, who, of course, in other respects the peer of the modern, far surpasses him in philosophic insight. It is this weakness of Macaulay which is his strength. He is distinctly, avowedly, a man of his time and place; British of the British, and more than that a Victorian Englishman,

an admirer of wealth and rank, proud of his country as the best on earth. It is the pleasant England of his day which interests him, as it interested alike his own countrymen and the contemporary world. Setting out to explain this joyous land, he found and his readers found that the fascinating riddle of its existence could be read clearest in the light of the Whig movements then continuing, of the policies of which he himself was an eminent supporter. Not in any sense a philosopher, the truth as he saw it was not an analyzed and dissected truth, not an abstraction, but a cognizable reality, to be known and judged by the exercise of wholesome common sense.

Heeren, as we said earlier, had set forth the characters of the scientific history which reckons with the peoples, the colonies, the economics, the commerce of the world. This had a very direct bearing on the state of the British Empire. Macaulay likewise knew that, to be complete, history must take account of the whole earth within the limits of its period. These conceptions the English historian with magisterial power incorporated in his work — the opening chapters are masterpieces of historical generalization. But his genius went further, it took scientific history from the university into the home; for the language, the illustrations, were so clear and so interwoven with the tale that plain men felt as if they had a vision of grandeur not vouchsafed hitherto to them or to their predecessors.

For years the volumes of Macaulay sold in England as no other book sold, and in America the numbers of copies distributed were second in number only to those of the Bible. There was not an important language of the Continent into which the glowing pages were not translated, and in many there were several rival translations. The truth was made so clear and was so manifestly the truth that the reading world felt a firm foundation beneath its feet. That the author was avowedly utilitarian, openly a British patriot, and intensely a Whig partisan only served to create the effective chiaroscuro in which all his work was done. He had been so unwearied a student of folk-song and folk-lore that he made himself what is now called in art "a primitive" in his conception and understanding of the commonplace, in his admiration of the homely.

It is doubtful whether the relativity of knowledge, either the phrase or the notion, was known to Macaulay. For him the plain truth was the truth. In addition, the state was for him no god, mysterious and omnipotent; it was a secular association existing only to assure the equality of citizens before the law, to protect life, liberty, and property. In the enjoyment of political liberty all other liberties are assured, and Macaulay is proud of that possession because he sees in it the honor of man and of men. He is a patriot because he has inherited this honor from an ancestry which suffered for it. Taine, who gives solid reasons for his opinion, thinks Macaulay

proved all he said as forcibly and directly as he stated it, thus giving the simple, every-day man an unshakable confidence. He not only takes testimony, he weighs the veracity and intelligence of his witnesses for the public judgment. Having erected on this foundation a set of plain principles, he draws self-evident conclusions and in his generalization he shows every rung of the ladder as he climbs. His style and discussion are direct and cumulative; the current carries him and his reader right onward in a straight line, gathering ever greater force until the flood is as impetuous as the Amazon and like it, too, as broad as the sea. Facts, ideas, explanations, the enormous mass of scientific material, all are clad in a style which, though harking back to Thucydides, Plautus, and Livy, to Petrarch, Dante, and Milton, contains an elusive something which is born from none of these, such is its sweeping passion, its irresistible eloquence.

This was not inspiration, it was art: the result of infinite painstaking and a set purpose. On a first rough draft he interlined, erased, corrected, inverted, restored, elaborated, until, as in Balzac's proof, the original was overlaid with a mass of words illegible to all except the author, who then at his leisure wrote his printer's copy in a fine, bold, confident hand. Prescott saw a few of these original foolscap sheets and says no one could form any conception of the amount of labor that one of them represents. With the serenity of a great soul, with a religious faith in the power of truth; confident, like Cervantes, that history was sacred because where truth is, there is God, he carried his own conviction into the millions of readers who were fascinated by his art. This art was impersonal, precise, even cold, because it was based on accuracy, on the personal knowledge of contemporaries, and not evolved like that of Carlyle and Froude from the depths of his own consciousness.

Macaulay's contribution to the science of history was twofold: the knowledge, the insight, and the sympathy, such as were not possible in the revolutionary epoch preceding his, an epoch when, as his predecessors said, "hearts rejoice or bleed" as contemporary events illume the past with a light "from the flames of Tophet" in Carlyle's lurid phrase, — this, and secondly, the ripened fruit for present use, progress along the lines of tradition, the way to preserve and improve what the fathers had won.

The second of our great names is that of a man who was still more remote from emotional influence, for he was not a man of affairs, not a statesman, not an acolyte of the social hierarchy, not even an artist, but a scholar, an investigator, and a teacher. Leopold von Ranke revived the past in a spirit which was largely that of an erudite lawyer without a case. His intimate friend was Savigny, and as for him it is the totality of law which had to be studied before further advance could be made, so for Ranke it is the totality of history, carefully

studied in the light of laws and institutions, and in the proportions of each part, that determines the relative values of scenes and events, that fixes the style and structural concepts of historical description and reconstruction. When Froude's wild theory as to Henry VIII's extraordinary matrimonial conduct was questioned by the critics, he replied in these very words: "The precipitancy with which Henry acted is to me a proof that he looked on matrimony as an indifferent official act which his duty required at the moment, and if this be thought a novel interpretation of his motives I have merely to say that I find it in the statute book!" Ranke had quite another notion of how official documents were to be used, and with their use his name is associated, as is the name of scarcely another.

Macaulay's ultimate criterion was not found in the edicts and statutes of rulers, not in the correspondence of princes seeking to deceive each other and to falsify the record; but in the consonance of facts with the great events which, linked one with the other and known by the common sense of mankind, form the chain of history. Though he made a judicious use of documents he had not the blind faith in them which makes their devotees ridiculous. Nor had Ranke, though above all else he was a student of diplomatic correspondence. It was he who brought the archives of foreign offices into the vogue they have since enjoyed among historians, his success being due, of course, to his critical faculties and his sanity; for sane he was, moderate, modest, and disciplined in the highest degree. Ranke's great renown was firmly founded on his use of a remarkable series of papers, the hitherto unconsidered series of reports addressed to the Council of Ten by the ambassadors of the Venetian Republic. He might easily have been dazzled by so unique a find and have exaggerated its importance out of all proportion; but he knew thoroughly the times antecedent and the times consequent to those he was making his own, and he fell into no errors. The papers in hand fixed dates, places, and circumstances, unerringly: they exhibited the quality, language, and character of the public business so as to permit important deductions; they illuminated their age in the contemporary judgments of very shrewd observers. But Ranke never dreamed that they revealed motives, except by induction: nor that they determined the great central channel of events. With the plodding industry of an antiquary he felt, groped, peered around and in the obscure corners of his material and brought forth little particles of fact which, when properly assembled with the great facts, made possible the tracing of sequence and the revelation of design.

Philosophically Ranke was inclined to Hegelianism. To the relations of a people with its habitat he paid less attention than his famous contemporary Curtius; the work of Buckle and the physical side of history were indifferent to him. It was the cosmic process with

which he was mainly concerned, the working of a universal spirit as revealed by outward manifestations. Of this he strove to be a dispassionate, intelligent onlooker and an accurate, sympathetic observer; a faithful recorder, whether the record lends itself to literature or not, and in his hands for the most part it did not. Nowhere in his voluminous writings is there any passage which rises to the heights reached by Mommsen in his description of Cæsar. Profound as was the scholarship of the latter, he was an avowed advocate of imperialism, the cause for which he spent his life, and so at times his passion lifted him to sublimity: the sober Ranke trod the solid earth. His was not merely the science of detail like that of Mommsen, it was an orderly array both of thoughts and of thoughts about thoughts, as well as a marshaling of facts. For this reason his attempts at a universal history bear the stamp of creative art. It is as an historical architect that he becomes approximately an artist; not in rhetoric, imagination, or enthusiasm. Neither an interpreter nor a critic, his style is clear, his characters forcibly modeled, his definitions exact. He is bold, but not too bold, for prudence is his forte and his foible. It is thus that he raises the spirit of each successive age and reveals, one by one, the hidden springs of action. His philosophical dogma cannot always restrain him, and there are pages of his which are masterpieces, not only in historical reconstruction, but in historical divination.

Extremes meet in the world of history as elsewhere. This is seen when Taine avows himself a disciple of Macaulay, as he virtually does in print and frequently did in private conversation. Antipodal in every respect to the Englishman, the Frenchman yet admired Macaulay as the representative of everything which France and Taine were not. The great French historian was an embodied contradiction, having been justly styled a poet-logician and considered to possess a philosophic imagination. What he openly admired in England were its social stratification, its sturdy Protestant common sense, its passion for liberty and for the traditions of its history, its boisterous, proud, and energetic spirit. For Latin, Celtic, ecclesiastical, Roman England he had a contemptuous disdain: it was the England of Macaulay which was the country of his soul. But he could not there abide, so pitiless and merciless was his logic. His philosophical career began in Hegel, passed by way of Spinoza, and ended in a positivism compared with which Comtism was a weak decoction. His earliest important paper was the outline of a system whereby the methods of the exact sciences could be applied to history — and from the effort to do so there was no surcease until he died. Alone of the pure materialists, who make emotion dependent on the bodily organism and on the nervous system, he carried his conviction, amounting almost to bravado, into the realm of practice. Others have sketched

systems, he dared to apply that which he evolved. He was the physiological psychologist in the laboratory of the world. It goes without saying that he struggled to the ridge of the universe of man only to fall over it into a gulf of complete helplessness. Avowedly not a pessimist, certainly not an optimist, his studied attitude of impartiality turned into a feeling of utter hopelessness and resignation which he could not conceal and which seemed to give him no contentment; not even that of having achieved.

Yet, as he marched, he incidentally, like Julius Cæsar, besieged and took certain flanking citadels in operations which have made the course of scientific history much safer and surer. His fierce logic minimized the idea of common sense as the norm of reference; his notion of rulers and their dispatches rendered him almost contemptuous of state papers. His favorite sources were contemporary memoirs, and these he used in great abundance and with consummate skill. What distinguishes him above others is his careful regard for physical elements in history and the penetrating glimpses he gets into its motives by the study of national psychology, clearly mirrored for him in national art and national literature. His famous doctrine of predominant power (*faculté maitresse*) set forth in his splendid essay on Livy, shows that individuals in a nation are begotten and controlled by primordial forces imposing on all certain common methods of thought and phases of feeling. Given the island home of a Germanic race, with its peculiar climate and the rude plenty which nature supplies, he boldly sketches step by step the course of English thought and conduct as delineated in her art, her letters, and her institutions. The race, the home, the period — these, if understood, make history almost an exact science in the descriptive sense: and in that only, for prediction is carefully to be avoided; it is not the function of history.

This judgment is based on a passion for the Exact, and is rooted in the philosophy of sensation to which Taine was addicted. As we know nothing except by sensation, so we know nothing but phenomena. The only faculties we possess, therefore, are those of analysis and generalization. Given the French people, its environment, and the succession of its states, we can note every phenomenon, explain it, and connect it with its causes and its effects. But we cannot predict; because, although we note the links we cannot know them nor see how they are produced: about them we may learn infinitely almost, but what they are and how they work we may never know. In the sense of prediction there can never be a science of history, because for man there is not and can never be any metaphysic whatsoever.

It has been wittily said that in Taine's efforts to follow the mathematical curves of his science, he generally found himself off at a tangent making delightful excursions in the open spaces of fancy and of art. Certain it is that his fancy adorns his logic, that in a system

intended to strangle imagination, imagination takes extensive flights; and, hovering everywhere, induces on the stiffest pages a highly artistic treatment and an attractive style. Taine's very axioms are paradoxes: in the French Revolution the orgasms of liberty beget a despotism fiercer than that of the former days; the fear of centralization getting on the national nerve created in the republic an organism more unitary than that of the displaced monarchy; the classical spirit was the sire of that abstract idealism which underlies all the maladies of modern French life. To this sort of inverted deduction he is perfectly resigned. He is quite as hopeless in the sphere of the individual man. It is the human beast which still controls and turns the man into the "carnivorous, lascivious" brute we see about us in such overwhelming numbers; or, at the other pole, into the foolish dreamer with a "diseased mind and disordered body." His detestation for what is loose and disorderly explains what is perhaps the most famous of his paradoxes, when he declared that in art he thought the sonata was as beautiful as a syllogism.

These three historians all agree that, admitting what one of them would have called the necessitarian, the others the providential forces of history, — that yet, upon the tissue which they weave, the pattern is formed by the will of man in the exercise of the choice which is offered to him and in accordance with his nature. Even so extreme a freethinker as John Morley admits this. Discoursing of Burke's analysis of historic forces, he says: "History has strictly only to do with individual men as the originals, the furtherers, the opponents, or the representatives of some of those thousand diverse forces which, uniting in one vast sweep, bear along the successive generations of men, as upon the broad wings of sea winds, to new and more fertile shores." To originate, to further, to oppose, to represent, an historic force, is quite a sufficient moral responsibility wherewith to burden even the greatest men.

So far, what we seem to recognize as the basic considerations of these men in regard to scientific history are the following: The field must be considered as a unit; the human factors are no longer heroes, kings, warriors, or diplomats, merely and alone, but the people as well, in all their activities; in and from such complexity of persons and operations it appears possible to disengage not relative but absolute truths and by a suitable system of reasoning to elucidate principles of action which are the ripe fruit amid the leafy perplexity of the boughs; the material of history proves thus to be the results of comparative study of politics above all, but likewise of law, institutions, language, beliefs, race, and geography. The historian must proceed with impartial mind, as far as his human limits permit, to consider and use both the matter and manner of his science, regarding society as an organism growing from within under external

influences, which act sometimes as checks, sometimes as a stimulus.

I venture to think that whatever be our judgment of his practical success, the validity of this procedure was even better and earlier perceived by an American pupil of Heeren than by any of the triad of uncommon men we have been considering. And to all that they possessed he added another element, the profound conviction of God working in history; his reading of "philosophy working by examples" was "God working by examples." This was George Bancroft. Contemporary with Macaulay, Ranke, and Taine, he was their peer as scholar, philosopher, or statesman. He had not perhaps the imagination of one, nor the style of another, nor the dispassionate judgment of another. But he had the insight and sympathy to catch the spirit of his age as Macaulay did — the amazing circulation of his volumes in all lands proved it. Utopian and poetic he is, yet his pages neither flash nor dazzle; they commend themselves by sobriety of argument and solidity of research. His use of state papers was as extensive as Ranke's, his appreciation of contemporary memoirs was as keen as Taine's. But he was neither indifferent nor agnostic. The son of a pious Unitarian clergyman, he kept the Puritan spirit untarnished to the end. His instinct for immediacy, for direct touch with the springs of action, made him a philosopher from his youth upward. These are his peculiar qualities and permeate all his work. With the discussion goes the lesson: in all history, truth and justice reign supreme. The writer of history, therefore, must observe two maxims: (1) Distinguish between original authority and historical memorials or aids; by the former we get a fact recorded at first hand, by the second, a decision of principle or authority; (2) represent every man from his own standpoint, judge him from your own. These acute and far-reaching principles were enough in themselves, when conscientiously applied, to mark his work as original.

His philosophy, however, was quite as original. His book may be considered as a treatise on the evolution of liberty along the central axis: this axis is the land designated by Providence as fitted not for freedom's relative but for its absolute development. Its heterogeneous population brought and brings from all other lands the elements of national character, and by this compulsion of origins the environment, though eliminating all that cannot be assimilated, retains all useful elements, incorporating them into an intricate but orderly whole. Hence Bancroft's studies in universal history, interjected from time to time as tributaries to the main narrative, were written with a consummate skill and a thorough knowledge, which found him readers in every important tongue and all over the civilized world. As an exhibit of the divine order, he further holds,

history is an organic unity, inspired by constant forces. Only within such an organization does the individual secure liberty, since there alone his faculties of will, reason, and emotion find their development in operation, with and against the consubstantial faculties of other like individuals. Collective man determines the standards of knowledge and of conduct, and it is therefore only in a democracy that the possibility of human perfectibility may be realized. This attitude of Bancroft's mind may be considered as typically American, and as the capstone of the system used and approved by the nineteenth century in writing history. Either a confidence in the moral order of the universe and in God as its author is the motive power of our rulers, the greatest contemporary history-makers; or we who profess it and elect them to office are vile hypocrites with a portion among the deceits and mirages of history.

The conclusions here presented will stand the test of the minutest examination bestowed on the best work by typical masters other than those we have named. Further, a fair analysis of their theory, procedure, and art, will, I believe, compel the admission that if the age has won anything it has won everything. Grounded in the concept of organic evolution, receptive of all ancillary learning, jealous of its own field and methods, alert for typical movements and truly great men, aiming at a kind of representation which is possibly but not necessarily that of the fine arts, history as now written is scientific, not as a philosophy of social evolution nor as an exact science of nature, human or otherwise, but as a practical form of human biography drawn and modeled in correct proportion and outline. There is boundless room for advance in supplement, completion, illustration, but the plan has been sketched and the basis laid. Some portions of the great advance have even been completely shown to move in perspective and in color. Either this achievement is all, or it is nothing; and our descendants must raze everything in order to begin anew the weary search for truth among the ruins of the past.

THE CONCEPTION AND METHODS OF HISTORY

BY JAMES HARVEY ROBINSON

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THE topic assigned to me by the distinguished scholars who planned the programme of the historical department of this congress is "The Conception and Methods of History," a theme so vast and intricate that its mere definition and delimitation would alone more than occupy the time allotted for this morning's session. I have therefore, with their permission, confined myself in this paper to one only of the many lines of thought suggested by the general title; or, rather, I have given a specific trend to the general discussion, which remains very general nevertheless. I propose to consider only the rather singular relations between history and literature, a question by no means either simple or isolated, but one which is closely bound up both with the current conceptions of history and with the methods of dealing with it.

The close alliance of history and literature is so natural and intimate, reaching back as it does, perhaps, to the very beginnings of both, that to question its legitimacy seems at once gratuitous and perverse. It would seem that history, at any rate, had no cause to complain of the union, since literature, if it be not responsible for history's very existence, has at least tenderly nurtured it and assured it both permanence and renown. Without literature history would never have had its muse, and would at best have led an obscure, ignoble, and precarious existence. The union has been a long and happy one. Until recently no one has suspected its perfect propriety — nay, inevitability, or thought of putting asunder what appeared to be divinely conjoined.

Yet had history been less subservient than it has always shown itself and more fully conscious of its high mission, it could never have made the sacrifices of independence and good faith necessary to avoid constant bickerings and misunderstandings with its mate, for it would be difficult to find two companions more widely at variance in their essential spirit and purpose than history and literature. It is the purpose of this paper to determine the nature and extent of this incompatibility which may some day lead to a divorce, or at least to a separation; when, if justice be done, history should be assigned

a handsome alimony, since it cannot forego the support that it has come to rely upon and which moreover it amply deserves in view of its long and unquestioning fidelity to literature.

For a time, indeed, it seemed that history was being led away by that formerly potent rival of literature, theology. This was due to the mighty influence of St. Augustine, who not only turned historian himself, but induced that gloomy young man Orosius, to compose a little treatise which by reason of the strong appeal it made to a dominant conviction of succeeding ages served to misdirect history into thorny by-paths for a thousand years or more. Toward theology history showed the same ready compliance and uncomplaining self-abnegation as toward literature; but happily it has regained, or is rapidly regaining, its independence, although some observers may still complain that it shows itself at times all too considerate of theology's feelings.

Deserting a figure which now becomes embarrassing, it is clear that history, like psychology and politics, is an old discipline which suffers much from certain ancient associations and prejudices from which the newer sciences, the physical in especial, are nearly exempt. It possesses no special terminology adapted to its specific uses, and historical writers content themselves with vague and uncertain expressions which are in their nature literary rather than scientific.

Historical students do not have their own books prepared to meet their peculiar needs, as does the psychologist, chemist, and mathematician. It is true that a few technical works exist, Potthast's *Wegweiser*, Jaffé's *Regesta Pontificum*, Richter's *Annalen*, Molinier's *Sources de l'Histoire de France*, and a goodly number of dissertations written by callow aspirants for academic honors. There are, too, special treatises on the various *Hilfswissenschaften*, or auxiliary sciences, of palæography, diplomatics, lexicography, etc. But in general the historical writer takes the public into his confidence and reserves only footnotes and appendices for himself and his fellow workers, wherein he may slyly elude the eye of the public and of the publisher; and escaping for the instant from the necessity of conciliating the casual reader, he may express himself with such accuracy and scientific precision as he is capable of.

In no other field except that of history is it a reproach to fail to be "interesting," that is, to catch and hold the attention of at least the more serious public. Consequently in no other subject do purely literary ideals so constantly invade the scientific. By literary ideals I do not of course mean clearness, order, and propriety of diction, or even vigorous and effective presentation such as might be found in a well-written geology or history of taxation. I mean, rather, those stylistic expedients which belong to fiction and poetry, oratory and the drama, without which these would collapse and fall away into

dust and ashes. With history, however, as a science these have nothing to do. From a scientific standpoint they have worked incalculable harm in the past, and are, I believe, one of the chief obstacles in the way of historical progress to-day.

I must confess here that I am by no means confident that many of you will sympathize with what I have been saying. To some of you the incompatibility of literary ideals and expedients with conscientious historical writing will seem so obvious as scarcely to merit serious discussion. You will urge that a great part of our more serious treatises, especially those which we owe to Germany, are free from the malign influence which I seem here to be perversely exaggerating. On the other hand some among you will see in what has been said only the promise of another dreary tribute to Dr. Dryasdust with whom Scott vainly expostulates at the opening of *Ivanhoe*. The following illustrations will, however, as I trust, meet, to some extent, the quite pardonable objections to which my general thesis would seem to be open.

Among the scientific principles which should guide the historical student, there is none more important than the conception of the continuity or unity of history. The antithesis of the unity of history is the inveterate habit of dividing the past into periods, epochs, eras, and ages, with apparent disregard of the now generally conceded unity and continuity. Few serious students of general history to-day would feel tempted to defend any of the schemes of periodizing which, from the days of St. Jerome down, it has pleased historical writers to devise. With few exceptions they are so obviously literary or theological in their origin that they have only an archæological interest. We are, nevertheless, still under the potent spell of the older writers. For instance, Professor Bury, in the introduction to his excellent edition of Gibbon's great work, says: "Not the least important aspect of the *Decline and Fall* is its lesson in the unity of history. . . . The title displays the cardinal fact that the empire founded by Augustus fell in 1453; that all the changes which transformed the Europe of Marcus Aurelius into the Europe of Erasmus had not abolished the name and memory of the Empire." Here one of our most patient and exacting scholars discards the proposition that Rome fell in 476 as a purely literary one without scientific justification. But he applauds Gibbon for fixing another definite date still more arbitrary than the first for its destruction.

While we are ready to acknowledge the law of continuity as fundamental, we equally seek excuses for disguising its importance, both in our teaching and writing. This must be attributed primarily to the exigencies of effective presentation. The steady and placid current of a river rarely makes the deep impression that is produced by a cataract. We have an innate love of the dramatic. Harnack

has said that the medieval mind discovered no more venerated attribute of deity than *Wilkürlichkeit,* that is, the seemingly arbitrary interference in the general trend of human and natural affairs. For a thousand years the miracle, not the inconspicuous course of natural law, riveted men's attention. Our inherent love of "a good story," our anxiety to conciliate the interest of our readers and students, our excusable partiality for effective situations, all combine to put the rather arid and esoteric idea of mere continuity at a disadvantage.

There are two phases of the continuity of history which should be distinguished. In its most commonly accepted use, it is the observed fact that every human institution, every generally accepted conception, every important invention, is but the culmination of a long line of progress reaching back as far as we have the patience or knowledge to trace it. In spite of this truth, it is certainly possible to establish rather satisfactory periods in the development of any single human interest. While no doubt the antecedents of the invention of printing by movable types are many, there is nevertheless a sudden and abrupt change for the world at large when the printing of a whole Bible was completed at Mayence in the year 1456. Certainly we may very properly begin an era in land transportation when a steam locomótive makes its first trip on a railroad.

But no single human interest is isolated from innumerable concurrent interests. This brings us to the broader conception of the continuity of history which depends upon the complexity of men's affairs. A somewhat abrupt change may take place in some single institution or habit, but a sudden general change is absolutely inconceivable. An individual may, through some change of environment, through bereavement or a malignant disease, be quickly and fundamentally metamorphosed, but even this is extremely rare as any one's experience will tell him. If all the habits and interests of individuals are considered, it will be found that only in the rarest cases are any great number of these altered in any brief period. In the case of society, no general change has, so far as we know, ever taken place abruptly. Every reformer knows how hopeless it is to attempt to alter even a single popular habit.

Now it is obvious that in so far as the historian confines himself to some single dominant interest in the past, the sharp division of the subject into periods is not by any means wholly preposterous or misleading. One can hardly object to periods in the history of philosophy, in the history of mechanical invention, in the history of painting or music. When, however, we attempt to deal with the general history of mankind, sharp divisions are absolutely impossible. Politically the tenth of November, 1799, marks a period in French history. At that time, there begins an abrupt and a thorough regu-

lation of the relations of the administrative bodies and a happy adjustment of the finances of the country, both of which exercised a deep influence upon the French; and yet compared to the sum total of the interests of the French people at that time which are susceptible of historical investigation, this revolution was almost insignificant. Domestic habits, artistic instincts, agricultural methods, philosophical tenets, popular religious beliefs, none of these were directly affected by Napoleon's accession to power.

Periods of history have, then, in the past depended for their plausibility upon the emphasis laid upon conspicuous events or upon a single class of human interests to the exclusion or neglect of the great body of normal and slowly changing preoccupations. Behind the craving for definite periods lay the literary sense rather than the scientific. Even to-day the historian would be lost were he to be deprived of such convenient expressions as the Middle Ages, the Renaissance, the Reformation, the Revolution. Yet all of these, from the standpoint of the conscientious scholar, are only slipshod literary subterfuges which we must constantly explain and qualify until they lose any scientific meaning which they may appear at first sight to enjoy.

Here we come face to face with one of the chief problems which historical students must attempt to solve. How far is periodizing scientifically possible in view of the inexorable continuity in human affairs which we all know to exist? What shall be substituted for the old misleading divisions? This matter has received far less attention than it merits. I have no solution to offer for a difficulty which has taxed master minds. I can do little more than foster discontent with the current phraseology — the first step toward better things.

Periods in history may perhaps be best viewed as mere divisions into chapters, indications on the part of the writer of those stages in his narrative where the reader may most safely and conveniently lay down his book for the moment. The reader must not be misled into thinking that they correspond to real breaks in the course of human affairs. He should see that they are first and foremost literary expedients. Moreover, the divisions should be so made as to substantiate rather than shatter the historical continuity. Like the cunningly devised serial romance, each installment should so end as to avoid any impression of finality. The reader's suspense corresponds with the historian's deep-seated sense of continuity.

It is clear that the periods commonly adopted in treating general European history are open to many serious objections, and there are indications that they will be gradually discarded or fundamentally modified. The chief difficulties are perhaps the following: The early Middle Ages are disassociated from the later Roman history in a way seriously to hamper the student. For a great part of those ideas and

institutions which we roughly class as medieval were fully developed before the break-up of the Empire. Secondly, there are many reasons for discarding the period commonly known as the Renaissance, which is at present the source of the most vicious misapprehensions. The later Middle Ages, beginning with the Crusades, Abelard, and the universities, the revival of law studies, the developing *Gelduirthschaft*, might without serious danger of misapprehension be regarded as closing with the Protestant Revolt, the final secession of a considerable portion of Europe from the most powerful and all-pervading institution of the earlier periods. Lastly, the commonly accepted period beginning with the supposed opening of the French Revolution in 1789 could with great advantage be extended back to the middle of the eighteenth century, thus putting the whole democratic movement in a truer light than hitherto. The French Revolution, in the sense of a permanent reform of earlier institutions which gave the example for similar changes in other European countries, was really nearly complete by 1790; and the emphasis which has hitherto been placed upon the assembling of the Estates General in 1789 has served to put the whole situation in a wrong light.

The divisions I suggest make no claim to be definitive or even novel. They all, however, have the advantage of bringing into prominence the historical continuity of which we may never safely lose sight.

Should the historian learn to meet the demand that he parcel out the past into convenient portions without, however, rending its unity or dividing its substance, he will still have other serious obstacles to surmount in his task of reconciling our historic knowledge with the exigencies of literary presentation. Foremost among these difficulties is that of expressing the degrees of certainty with which various historic data can be established. Every investigator is keenly aware that our information in regard to the past varies all the way from the most precarious and suspicious rumors to reasonably reliable reports. We sometimes have manifold and seemingly accurate accounts of trivial matters, sometimes only the most meagre and unsatisfactory hints in regard to great changes and enduring institutions. The literary spirit, uncurbed in the past, has commonly led the writers, upon whom the historian must rely, to bequeath us notices of the exceptional and startling rather than of the humdrum routine, some knowledge of which is so essential if one desires to form an adequate conception of the general conditions and prevailing tendencies of a particular period.

Few accepted historic facts, whether trivial or momentous, are susceptible of anything like absolute demonstration. The modern newspaper is an historic source of unparalleled accuracy and reliability compared, let us say, with Suetonius's *Life of Julius Cæsar*, Ein-

hard's *Annals*, *The Chronicle* of Lambert of Herzfeld, Erasmus's *Letters*, or the *Memoirs* of Baron de Marbot. Yet we take the newspaper report none too seriously, but sedulously discount even its most precise details. Not long ago I read in a Chicago newspaper a brief biography of a friend of mine who had been elected to an important academic position. The writer of the notice lived in the same city with the one whose life he described, and his information was such that he could hardly have received it from any one except my friend himself or one of his family. A report prepared under similar conditions in regard to Hugh Capet at the time of his accession to power would be regarded by the historian as a precious document of unimpeachable veracity. Yet the newspaper biography contained a dozen inexcusable, almost inexplicable blunders.

The historical investigator is constantly tempted *faute de mieux* to take his sources far too seriously. Sometimes he is awakened from his dogmatic slumber by the appearance of a new source which exposes the fallacies of one hitherto revered for its accuracy and conscientious detail. No one, for example, can read the simple and sincere account of Marie Antoinette as she appears in the *Memoirs* of Madame de Campan without accepting it as essentially true, yet the publication by Arneth of the correspondence of the Count de Mercy with the queen's mother puts the poor girl in quite another light. Why should we receive the *Life of Charlemagne* by Einhard with greater confidence than the *Memoirs* of Madame de Campan? Einhard, as was long ago pointed out, was fascinated by the style of Suetonius, from whom in his enthusiasm he even goes so far as to borrow convenient phraseology. Here surely we find an invasion of the literary spirit, which might easily deflect the writer from the particular aims which are most esteemed in a biographer.

The historian has, however, no accurate means of representing his own dubiety, strongly as he may be conscious of it. Much less can he impart his doubts and uncertainties to his reader. For the singular details of the death and burial of Alaric, which appear even in our elementary text-books, we have only the report of the Goth, Jordanes, an ignorant writer of the meanest ability who lived over a century later than the events he narrates. He appears to be guilty of the most palpable errors, in those cases where he can be checked by Zosimus, who is generally regarded as a trifle more conscientious than the Goth. Should there not be some way of indicating clearly the different degree of certainty that we enjoy for this event, and, let us say, the circumstances which accompanied the death of Charles the First of England or of President McKinley? Portions of the Bible have been ingeniously printed in several colors, so that the reader may distinguish the several sources which have been used in the narrative. Should a similar system be introduced in our general historical works,

we should find that the burial of Alaric, or the way in which Hugh Capet became king, would appear in faint, scarce legible letters of whose purport we could not be certain, while the first meeting of the French Convention or the abdication of Napoleon would be sharply defined and unmistakable.

One of the most important and hopeful results of the modern critical spirit is the special attention which for some decades has been given to the origin and composition of the sources. The monk of St. Gall occupies a very different place from what he did a century ago, and no one would any longer rank William of Tyre with Fulcher of Chartres as an authority for the First Crusade. The development of *Quellenkritik* is perhaps the most important form which the incipient revolt of history against literature has yet taken. It is the most scientific phase of historical investigation, both in its spirit and results, and is now properly considered an essential part of the training for those who propose to devote themselves to historical work. Yet as a leaven it works slowly and imperfectly; slowly because of a singular lethargy, due to manifold causes, which makes the perpetuation of an ancient error so much easier than its rectification. In a recent work on the history of classical scholarship one may find the exploded legend of the portentous year One Thousand appearing once more, although in the footnotes the author has inserted references to the various contributions which render the hypothesis wholly untenable. Sybel, in the second edition of his critical discussion of the sources of the First Crusade, is encouraged to note that during the forty years which had elapsed since he issued his first edition most scholars had come to accept his results, and he expresses the not unreasonable hope that in the course of another forty years his corrections may find their way into our popular manuals. This does not seem too optimistic. Nevertheless, it should be remembered that Voltaire discarded the notion, which goes back at least to Luther's time, that the classical Renaissance began with the fall of Constantinople and the dispersion of the Greek scholars. So tenacious, however, are rooted historic misapprehensions that only the other day a classical scholar of repute unhesitatingly elaborated the old view before an intelligent audience. It will require some decades still before an explanation of such obvious literary charm will be permitted to go the way of Pope Joan and of William Tell.

Quellenkritik works imperfectly, as well as slowly, because, at present at least, a great part of our historical material lies outside its range. A few sources, like the life of St. Columban, which, with many other lives of the saints, has been acutely analyzed by Bernard Krusch, may be shown to be the result of accretions belonging to different ages. In the field of recensions and false attributions *Quellenkritik* is at its best. I think that I am right, however, in saying

that it does not in general attempt to estimate the reliability of sources of undeniable authenticity as regards their author and unity of composition.

It is possible that psychology may some time come to the aid of history. Not only may the study of the psychology of the individual suggest better methods of dealing with the character, aspirations, and motives of historical persons, but that new and interesting subsection of psychology to which German thinkers are turning their attention, the psychology of evidence or report, — *die Psychologie der Aussage*, — may furnish a scientific method for estimating more exactly than we have hitherto been able to do the relation between the sources and the objective facts which they purport to record.

Yet in spite of these hopes history is and must always remain, from the standpoint of the scientific observer, a highly inexact and fragmentary science. This is due not only to the fact that it concerns itself with man, his devious ways and wandering desires, which can never all be brought within the compass of clearly defined laws, but also because it must forever rest upon scattered and unreliable data, the truth of which we too often have no means of testing. Popular historiography has in the past been smugly unconscious of this melancholy truth, and in writing for the public even conscientious scholars find themselves suppressing their doubts and uncertainties, concealing their pitiable ignorance, and yielding to the temptation to ignore yawning gaps at whose brink history must halt even though literature can bridge them with ease.

Let us now turn from the painful theme of our ignorance, over which literature has persistently sought to throw a kindly veil, to the influence which literary motives have exercised upon the content of history. Obviously this influence must predominate so long as history depends for its interest and charm first and foremost upon the story that it has to tell. The anecdote or reminiscence, the startling situation, the signal calamity, the deeds of heroes, the machinations of the wicked, are the primitive materials for history, and are readily elaborated into literary form. In this type of composition superficiality and inaccuracy are readily condoned. If the reader is amused, he is satisfied; he scarcely thinks of asking whether the information which comes to him easily and pleasantly has any inward meaning or even whether it is probably true.

The newspapers afford us a daily illustration of history whose proportion and perspective is determined by literary ideals, — of a somewhat low order to be sure; but they are the same motives that determined the selection of events to be recorded a thousand years ago. The spirit is the same in the *Annals* of Xanten of the ninth century and in the New York *Times*, which lies on my desk as I write. From the former we learn that on the fourth of February, 848,

toward evening, it lightened and thunder was heard. That in 852 "The steel of the heathen glistened; excessive heat, a famine followed. There was not fodder enough for the animals. The pasturage for the swine was more than sufficient." The *Times* tells us on its first page that on September 11, 1904, at two o'clock in the morning a rat bit a baby in Jersey City. On the same day, during the morning service, a bad man set off a firecracker in Westminster Abbey, and a pigeon lighted on the minute-hand of a clock in York, Pennsylvania, and remained there full fifteen minutes.

Until within a hundred years or so history was frankly narrative, except when it bethought itself to be instructive. Under the latter term may properly be included both the moral and theological interpretations by which writers sought to enhance the dignity of what would otherwise seem a mere story and bind together into an edifying whole the scattered episodes and arid annals which constituted their knowledge of the past. The moral, even the theological, attitude toward history has by no means disappeared. The admirable address prepared by Henry C. Lea for the last meeting of the American Historical Association is still fresh in the minds of American scholars. It is directed against Lord Acton's defense of an immutable moral standard, which should be ever before the mind of the historian and guide him in judging the past and determining whether it be good or evil. Dr. Lea discovers no historic basis for such an assumption. Historically, good and evil are and must always be relative. This is a conclusion toward which scientific study of the past has for some time been tending. When it is generally accepted, it will do much to emancipate the historian from some of the most serious disabilities under which he has labored.

Since the middle of the eighteenth century new interests other than the literary, moral, and theological have been rapidly developing, which have exercised a remarkable influence upon historical research, radically altering its spirit and aims, and broadening its scope. Montesquieu's *Spirit of Laws* reviews the past with the purpose of establishing a purely scientific proposition, namely, the relativity of all human institutions, social, political, educational, economic, legal, and military. The discussion attending the drafting of the first French constitution served to stimulate an interest in constitutional history which has never flagged. Indeed, to not a few scholars this particular branch of research appears to constitute history *par excellence.* Yet even in this chill region one may discover now and then a glow of warm partisanship, which suggests that science has not yet done its perfect work. But we need Freeman as well as Stubbs, and Waitz as well as Fustel de Coulanges.

Political economy has wrought a still more radical change in the content of history than has the constitution-making of the last

century. It emphasizes a wholly new group of factors in the life of mankind, to which but the scantest attention was given before the nineteenth century. It has brought out clearly the crudity and superficiality of many ancient and long approved explanations of historical phenomena and substituted new solutions which have become generally accepted. Without conceding the arrogant claims sometimes made by political economy to be able to explain everything in the past, few historical students will question its power to explain more than any other branch of social science. Greatly as the modern attention to institutions and to economic conditions has served to enrich the field of historical research, it is clear that they leave out of consideration matters far too important to be neglected, educational, religious, æsthetic, moral, and intellectual. These will doubtless continue to form the subject-matter of special disciplines, where they may be developed with every attention to technical detail. Yet experience has shown that things so intimately connected cannot be artificially separated without the danger of grave loss. Both psychology and the history of religion have successfully shown the constant interconnection and interaction of all spiritual and intellectual phenomena, for it is the same individual who is at once religious, æsthetic, moral, and intellectual. May there not then be a new task for the historian who, while taking advantage of all that has been contributed by those who have devoted themselves to political, institutional, and economic history, understanding these in their broadest sense, shall write a history of the inner man, his range of knowledge, his tastes, his ideas of the world, and of himself? This would have little in common on the one hand with the older narrative history, dominated as it was by literary ideals and given to moral applications, or on the other hand with technical departments of historical research, of which there is an ever-increasing number. There are abundant indications that the history of culture is now outgrowing its rather ill-starred infancy and will some day dissipate the gloomy forebodings with which certain distinguished prophets cast its horoscope.

The foregoing brief sketch of the relations of history to literature, rude and incomplete as it is, enables us to foresee the probable outcome of the tendencies which have been noted. Scientific history is opposed in spirit and method to literature, which has its own lofty ideals, but ideals which should never have been imposed on history. History is emancipating itself from its long servitude, but easily falls back into its former bondage. Yet the historian will more and more boldly appeal to his own fellow scholars, as do the representatives of other sciences; and so freed from the restraints imposed by the tastes of the public and their want of special knowledge, history will develop a technical literature, the prerequisite of progress. In time this will react upon popular history, which will slowly

become scientific in the sense that modern popular chemistry or zoölogy is scientific. For the scientific has become during the past century a dangerous rival of the literary interest.

The progress of history as a science must depend largely in the future as in the past upon the development of cognate sciences, — politics, comparative jurisprudence, political economy, anthropology, sociology, perhaps above all of psychology. It is these sciences which have modified most fundamentally the content of history, freed it from the trammels of literature, and supplied scientific canons for the study of mankind. They are the auxiliary sciences of history in a far deeper sense than are paleography, diplomatics, or even philology. The sciences relating to mankind will hereafter dominate the work of the historian. His task, it will be seen, is nothing less than the synthesis of the results of special sciences, a task so grand and comprehensive that it will speedily wean him altogether from literature, for no poet or dramatist ever set before himself a nobler or a more inspiring task, or one making greater demands upon the imagination and the resources of expression than that which now lies before the historian.





CAMPANILE, TRINITY COLLEGE, DUBLIN
Photogravure from a photograph.

SECTIONS A AND B

HISTORY OF GREECE, ROME, AND ASIA

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HISTORY OF GREECE, ROME, AND ASIA

(*Hall* 3, *September* 21, 10 *a. m.*)

CHAIRMAN: PROFESSOR THOMAS D. SEYMOUR, Yale University.
SPEAKERS: PROFESSOR JOHN P. MAHAFFY, University of Dublin.
PROFESSOR ETTORE PAIS, University of Naples. Director of the National Museum of Antiquities, Naples.
PROFESSOR HENRI CORDIER, Ecole des Langues Vivantes Orientales, Paris.
SECRETARY: PROFESSOR EDWARD CAPPS, University of Chicago.

THE Chairman of this Section, Professor Thomas D. Seymour, of Yale University, when introducing the speakers, called attention to the fact that "never before have the minds of scholars been less prejudiced in the examination of the relations between Greece and Asia. The most enthusiastic Hellenist no longer feels bound to claim that by a sort of parthenogenesis all culture had its rise on Greek soil, with no seed sown or influences received from early civilizations. And, on the other hand, the Orientalist has learned that the achievements of the Greeks and Romans are not to be explained by an examination of the early influences which they received. As in the case of an individual, the personal element is paramount, but the circumstances of infancy and early childhood may be as important and interesting in the case of a nation as in that of an individual. The material for our joint discussions has been accumulating rapidly, and we are just beginning to hear one of the most important witnesses, — Crete. Though many old doubts and questions are settled forever, many new questions arise and call loudly for an answer."

THE EXPANSION OF GREEK HISTORY

BY JOHN PENTLAND MAHAFFY

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Mr. Chairman, and Gentlemen, — I feel it no small honor to be selected for the prominent duty of delivering an opening address on this momentous occasion. For we may call it a great intellectual marriage of Europe with America, to which all the sciences, both historical and positive, are invited with equal hospitality. And thus while some are sending their inquiries across vast realms of space, others like ourselves are reaching back across millenniums of time; while some are probing the constitution of the minutest atoms of matter, others like ourselves are exploring the rudiments of human society. Both studies are essential to the progress of this our twentieth century. For if the civilized man differs broadly from the savage, in that he is in process of understanding and controlling the forces of nature, he differs more essentially perhaps in this, that he strives with eager interest to comprehend the annals of the past — the long struggles, the successes, the failures of our forerunners to emerge from a condition a little higher than the brute into a condition a little lower than the angels. This vast study is of necessity to be prosecuted in compartments, if for no other reason because our race has been fertile in devising languages, wherever human society began its organization. Their number is enormous. The best judges, Terrien de la Couperie, Archibald Sayce, have told me that there are not less than eight hundred known, not to speak of the hundreds that may have disappeared. And without knowledge of his speech, we can gain but a superficial knowledge of the speaker. Our happy lot in this Section is to be concerned with Greek — not only the most perfect of all the organs of communication ever devised by man, but one in which our knowledge has in this generation attained an enormous expansion, insomuch that our investigation of that people and its civilization has been as progressive as any study that could be named. The number of new texts discovered is such that no living man can know them all. Each one of us that has explored has added scores of new words to the Greek Lexicon, dozens of new facts to our knowledge of the Greeks; and so we may say with truth, that while the literature of the other great classical language, Latin, has stood still, or gained but trifling increment, Greek is growing by leaps and bounds, giving the lie to the narrow scientist, who would thrust it from its high place in our edu-

cation, because it has been branded in the false jargon of his crowd as a dead language. My duty here is to show you the relations which have grown up between Greek political history and the sister studies in our day; how fruitful researches and explorations have told upon our knowledge of Greek history, and more especially how the centuries that went before and those that followed after the golden age of Greek culture are emerging both from the gray dawn of obscure origins and the lurid twilight of confused decadence, into the order and proper sequence of rational history. In attempting this huge task I hope I may gain your earnest attention. I know you will vouchsafe me your generous indulgence. I may also forewarn you that, for obvious reasons, Professor Pais, my colleague in the matter, has agreed with me that each of us will prosecute that branch of the subject which he has made the special study of his life.

When I was a boy and first plunged into Greek history, the beginning of our knowledge was the Iliad of Homer. We were taught by Niebuhr, and still more explicitly by Grote, that all the legends of the Greeks concerning their earlier settlements and expansion were the mere play of fancy, quite possibly pure inventions, in any case only admissible into history as a picture of the national mind in a certain stage, at a certain epoch. Even the facts narrated by Homer were within the range of fiction; the society which he painted was only real in so far as the poet reflected his own times and the life of men around him. And no doubt Grote and his school were perfectly right that the uncorroborated statements of legend by a poet, nay, even the early genealogies which commence with the gods, are but the wreck which the stream of time leaves about some chance obstacle that succeeds in staying its course. Thus we arrived at the skepticism of Sir George Cox and Sir George Lewis, in my youth very active volcanoes, but now happily extinct, that no Greek history is credible till after the middle of the seventh century, B. C.; and I myself have contributed my share in showing that the early Olympic Register was not the contemporary and continuous record of early facts, but the fabrication of a learned theorist. And this destructive criticism of mine, bowed aside as a paradox when it appeared, is accepted by the recent historians as a pretty obvious deduction from our facts, either with or without the mention of the critic who first ventured to declare it.

But have we now no corroboration of our body of early Greek legends, and if we have, from whence did we obtain it? The man, Schliemann, who opens the last epoch of research into early Greek history, was not a scholar, or a man of literary habits, but a man of enthusiasm for Homer, and of boundless energy in carrying out his mind. He had shown his ability by making a large fortune early in life out of nothing but his brains, and when I tell you that he made

most of it in this country, and as a stranger, you have at least one measure of his talent which you will easily appreciate. He had the singularity to devote half of that fortune to exploring the Homeric sites, and thus proving the historic value of the Iliad and Odyssey. And he went to work with the spade, at first ignorantly, for he dug holes, which is the most destructive form of inquiry known, instead of taking off layers or strata of earth, as he learned to do in his later years. He found less than he expected or believed, so far as he hoped to find and thought he had found the actual tombs of Agamemnon and Clytemnestra, or any direct evidence of the Homeric story. But when Homer speaks of the fortified Tiryns, the much golden Mykenæ, the sacred Ilion, Schliemann found far more than he had ever divined; for he disclosed to the astonished Hellenists of his day a whole rich primitive civilization, which subsequent exploration found to be not peculiar to Argolis, but spread over most of Greece, being carried by trade oversea across the Ægean, and recurring even in distant Egypt. This Mykenæan civilization, as we now call it, is known by its handicrafts and arts, above all by its pottery, its gold and silver ornaments, its beehive tombs, its elaborate palaces. And so wide were its ranges in transmarine commerce, that we have found not only Egyptian scarabs, but ostrich eggs from inner Africa, and Baltic amber among its treasures. Three questions were immediately raised concerning this large discovery: first, how old was it? secondly, was it identical with Homer's civilization, or not? And if not, was it indeed Greek? Its great age was settled not merely by the archaic character of its art, and its very small use of iron, but still more clearly by the occurrence of early Egyptian articles, dating from about 1400-1200 B. C., and showing that intercourse of Egypt with Greece was far older than the Homeric age. There was also this negative evidence, which I alone had pressed on Schliemann before he commenced his work. I inferred from the total ignoring of Mykenæ by Æschylus, whose tragedies ought to have been enacted there, that in his day the practical knowledge of the city was gone, and that it had already then been long destroyed. I forewarned him that he would find there no Greek coins or inscriptions. He found no writing of any sort whatever. But as we now know that in the old Cretan remains the inscriptions were on clay tablets, which are easily destroyed by exposure to rain, I think it possible that he may have overlooked some such documents.[1]

As regards the correspondence of the remains with Homeric pictures, the contrasts seem to me rather greater than the likenesses. The armor was undoubtedly the model of the Homeric weapons; the tombs have some Greek features; but on the whole, the question whether the epoch was one of purely primitive culture, or of some-

[1] That is Mr. Arthur Evans's opinion also.

thing earlier passing into early Greek culture, was left very doubtful. A better knowledge of the Troy that Schliemann has excavated, and of the remains of Cnosos in Crete, now in the act of being recovered for us by the zeal and skill of Mr. Arthur Evans, have thrown much light upon these incunabula of Greek history. The most interesting point regarding the Trojan work recovered by Schliemann was its great rudeness, when compared with that of Tiryns and Mykenæ. For the Homeric poems had led us to believe that the culture of Troy was fully as advanced as that of the invading Greeks. We owe to Dr. Dörpfeld the further discovery that the Ilios of Schliemann was not the sister in time of Mykenæ, but an older and deeper stratum, and probably one thousand years earlier. The Mykenæan stratum, through which Schliemann had pierced without recognizing it, was found on a higher level all round Schliemann's excavations, and was found also in every way to correspond to the Greek work of the Mykenæan period. This proved that an enormously old culture had taken possession of the shores of the Mediterranean, and that even the Mykenæan inherited from a long series of spiritual ancestors the culture which seems to us so archaic.[1] The discoveries of Mr. Evans not only tended (as usual) to corroborate the general features of the Greek legends about King Minos, for example, his sea power, shown by his unfortified palace near the seaboard, but proved that at this early stage two hitherto unsuspected forms of writing, one in rude pictures, the other in linear script, were in use in Crete, and doubtless therefore throughout the coasts of the eastern Mediterranean. If these texts, scratched or impressed upon clay tablets, and certainly, I think, not Greek, are ever deciphered, we shall know more clearly the character and the provenance of the race that inhabited these coasts and islands during the second millennium before the Christian era. In my opinion that race will prove to be non-Hellenic, and even non-Aryan, so that the boast of the Athenians and other Greeks that they were an indigenous race will be once more refuted.[2]

But here the historian has recourse not to artistic remains, to pottery, or to building, but to the evidence of the sister sciences of anthropology, and still more of linguistics. The former science has yielded but poor results. The variety of the physical types of skulls is such that we can only infer a great mixture of races in Greece, without the predominance of either Aryan or pre-Aryan types. Such at least is

[1] Under the lava of a prehistoric eruption from that great submarine and still active volcano, of which Santorin and Therasia (the ancient Thera) form the outward slopes, there were found thirty years ago the remains of what was aptly called by the French a prehistoric Pompeii — human bones within rude houses, with remains of rude pottery, and even gold ornaments.

[2] But I must warn you that excellent authorities, Rohde, Reisch, think differently, and think the Mykenæan builders the direct ancestors of the Homeric Greeks. On the other hand Mr. Ridgeway, in his most remarkable unfinished book, *The Early Age of Greece*, while he maintains that the earlier race differed materially from the Achæans of Homer, — he calls them Pelasgians, — yet regards them as Aryan.

the conclusion of Paul Kretschmer, whose work on primitive Greece embodies most of the latest knowledge.[1] The results of linguistic inquiry are far more important. Starting from the fact that there are elements, in the old Greek that we know, still inexplicable, that there are formations of place-names which have all the air of being non-Aryan, Kretschmer has compared the relics we have of the languages of Asia Minor, excluding those of the Aryan type. His conclusion is that inter-related languages of a non-Aryan type were spread all over the seaboard of Asia Minor, and that the features of these languages which remain are also to be found in Hellenic place-names.[2] Hence the science of language warrants us in assuming that Aryan invaders found all over Greece and Asia Minor an earlier population with, if not unity, at least kinship, in the grammatical structure of their speech, and therefore probably not primitive or savage, but provided with some degree of civilization. Hence the earliest Greek culture, even if Cretan and Mykenæan work were Greek, may be regarded as a composite civilization, and the fascinating task of future inquirers will be to assign to the different layers of population their respective shares in the great result. In such investigations all the sister sciences must lend a hand to the historian — linguistics, anthropology, archæology, and above all he must possess that highest quality in any scientific man, the imagination which combines facts, which strikes out theories, which makes research methodical by bringing it under fixed and leading ideas, which turns the valley of dry bones into the habitation of living men. The ancient times of Greek history are therefore a progressive study, in the truest sense of the word. Grote discarded the myths as evidence, he even ignored the living testimony of the everlasting hills and the many voices of the ever-intruding sea, and wrote his great work in a London study. E. Curtius, a generation later, equipped himself by long residence and travel in the glens and fiords of Greece, and if in political understanding he was far inferior to the English statesman, in picturesqueness, and in his feeling for the real life behind the myths, he made a long step in advance. Another generation passes by, and we have, among many able books, the newest and best in the history of Mr. Bury. His opening chapters seem centuries ahead of Grote, generations ahead of Curtius. For in the last twenty years excavations in many parts of Greece have added masses of new evidence. Egyptology and general linguistics have contributed their share, and as the force of genius in the individual brings up from the darkness of the sub-conscious self the long-forgotten lessons of the past, so the power of Minos, the long succession of human homes on the hill of Ilion, the builders of the great fort of Tiryns, are rising from prehistoric night into the morning of Greek history.

[1] *Einleit. in die Gesch. der griech. Sprache* (Göttingen, 1896), cap. II.
[2] *Op. cit.* p. 292.

Let us now return from our odyssey into Cimmerian darkness, and from visiting the shadows of departed heroes, to the shores of historic Greece, and inquire whether modern genius and modern industry have not added something to that more precise knowledge which we owe to the literature of the classical epoch. And here, too, we shall find that the gain is momentous, and the promise of future increment fair beyond our hopes. But that is so because our whole method of investigation has been enlarged, and because we have developed the relations of Greek philology and history to many kindred researches. We do not indeed grow weary of analyzing and commenting on our Greek historians, though that process has been likened to the squeezing of the last drops of juice from the exhausted lemon. But since we learned from our early travelers, notably from Colonel Leake, that Greek history must be studied in Greece; since the French government, more than half a century ago, took the lead in founding an archæological school at Athens, the spade and the measuring-rod have been applied to verify and correct the narratives of Herodotus, Thucydides, and Xenophon. A crowd of inscriptions have been extracted from the soil, or from medieval walls into which they were built. The modern writer dare not put his pen to paper without searching the great collections of these inscriptions, to which the learned journals are perpetually adding fresh material. For in imitation of the French, the Germans and the Greeks have endowed their archæological schools, and produce their *Transactions* in Athens. The English and the Americans have followed suit with private enterprise, and so a large body of experts has been let loose upon the country, and has added to the capital enterprise of Schliemann at Mykenæ and Argos many careful investigations at Athens, Olympia, Delphi, Delos, Megalopolis, the Argive Heræum, and a dozen other sites. All these have yielded us topographical, historical, and social evidence. Our difficulty now is not only to find, but to compass the evidence which is accruing, and which is scattered through a number of learned journals, such as the French *Bulletin de correspondance hellénique*, the German *Mittheilungen des archeologischen Instituts*, the English *Journal of Hellenic Studies*, to mention but three out of many. The men who have by universal consent done most for the better understanding of Greek history are not the Greek professors at home, but the brilliant directors of the French and the German schools, who have been able to indulge their genius with ample appointments and with the experience of many years of splendid industry. It is of course impossible for me in this general discourse to turn aside to the particular inquiries which have thrown light on particular points of Greek history. The excellence of these studies consists in their minute and accurate detail. I need only quote, as specimens, the masterly analysis of the Greek theatre derived from

a comparative study of divers extant remains by Dr. Dörpfeld; the same author's rehandling of the famous topographical chapter in Thucydides concerning the surroundings of the Athenian Acropolis, the demonstration by Mr. Grundy that Thucydides could be as fallible as any ordinary writer in his account of the bay of Pylos, of the siege of Platæa, or in his copy of a now extant inscription.

If you want to estimate the results in an easy and obvious way, compare any guide-book to Greece of ten years old with the newest editions of the same work. Nothing now gets antiquated so quickly. But if you want larger and more splendid evidence of what recent research has done for our knowledge of Greece, read Mr. Frazer's monumental edition of Pausanias. Twenty years ago, nay, even ten years ago, such a work would have been impossible. Nor could it have been done at any other time ever since the decadence of the Roman Empire. But now Mr. Frazer has been able to go over the cities and monuments described by the old tourist and antiquary of the second century, and gives us, in most cases, if not in all, verifications and illustrations from the excavations of our own day.

It might be imagined that these discoveries affect almost exclusively our knowledge of the art side of Greek life. That is not so. The many recovered inscriptions tell us of wars and of treaties, of laws and of rites, and of the social life of the people which we can restore in the ruins of their temples, their theatres, and their homes. And let not the title of this Department, Political and Economic History, blind you to the fact that without the social life and the art of a people history will ever be dull and lifeless. The Hermes of Praxiteles, the bronze charioteer of Delphi, the great tomb of Sidon — all these are as important in understanding Greek history as are the constitution of Athens or the currency of Rhodes. We live, therefore, in an era of expansion even of the golden age of Greece, an expansion in depth, or in quality of knowledge, even more than in the multiplication of facts, such as Europe has not seen since the Renaissance, and such as may never again recur, when the present still untouched sites have been disclosed and the testimony of statues and of stelæ has been exhausted. But of this limit there is no prospect in our generation, or perhaps for half a century to come.

I have not yet said one word concerning our gains of the last decade in the matter of Greek literature, which is, after all, the department of human culture in which, most of all, the modern world owes great and everlasting obligations to Hellas. The types of the epic, of the lyric poem, of the drama, of the prose dialogue, of the oration, have been fixed by the Greeks forever, and shown to us in specimens of a perfection seldom equaled, never excelled. If I have set down our gains in this literature last, it is not that their importance is not paramount, but because the manner of their

recovery leads us to the third part of my discourse — the extension of Greek history into later times and other societies than those of the golden age; for the consideration of our gains will naturally lead us to the manner and method by which these gains were made. And in the first place, what have we acquired? In actual texts complete, or partially complete, we now have the *Mimes* of Herondas, dramatic sketches of low or vulgar life, such as the Dutch Teniers has given us with his brush. We have most of the *Constitution of Athens*, a tract ascribed to Aristotle and often quoted as such by Plutarch. We have some of the *Odes* of Bacchylides, the lesser contemporary of Pindar, and, what is far more valuable, among them specimens of the dithyramb, a form of poetry much cited by the ancients, but never understood till this discovery. We have the *Persians* of Timotheus, another to us novel form of poem composed for an elaborate musical illustration, somewhat like the Italian opera, and rivaling the texts of that opera in its tenth-rate quality. But when music is fitted to verse, it is but seldom the setting of perfect music unto noble words, of which the poet dreams. One partner becomes predominant. Let us hope for the sake of Timotheus, for the sake of the public of whom he was the idol, that in this case, as in that of Richard Wagner, the music was the real attraction. But I must refrain from criticism. The works just named are all incomplete or shattered in some part, for the exterior of the papyrus rolls on which they were written could hardly fail to have been affected by long centuries of burial or by the hands of ignorant finders. But they give us enough to judge both the works and their authors. Of lesser fragments, stray pages, single scenes of plays, or even of music-hall farces, elegant extracts, epigrams, we have a whole library. Almost every known Greek author, and a great number of unknown, are represented in these newly acquired texts.

It is of course known to you all that this treasure comes from Egypt, not Greece, and was preserved by the Greek-speaking population of that important branch of Hellenism, from Ptolemaic to late Roman days. The life of these Greek settlements in Egypt, with their language, their books, their traditions all from Greece, are now a vital chapter even in the political and economic history of the nation. Among the literary remains are innumerable business documents, official orders, every-day correspondence, copies of wills and of contracts — all Hellenic in language and origin, and pointing back to the classical culture of the mother country. Here indeed we have a perfectly unexpected and notable specimen of what the conquests of Alexander produced in foreign lands — of that Hellenism which is at last commanding the attention of classical scholars. For there is every reason to think that these Greek settlements, in the midst of a native population, were not exceptional, but typical of what Alexander projected and his followers effected all over the East. Not only

on the shores of the Euxine, where there were long since Hellenic cities, which communicated with Greece by sea, but all through the body of Asia Minor, notably in Syria and Palestine, in Mesopotamia along the Tigris and Euphrates, nay, even on the Oxus, and within range of the Turanian steppes, there were established settlements of Greek soldiers and traders, with privileges to attract them there, but also with the duty of guarding the new Greek civilization of the East from mountain robbers and from national revolts. I know not what the possibilities are of successful excavations in Syria — on the site of Antioch ruined by so many earthquakes, of Apamea, of Baalbec, of Gerasa, in the Decapolis of Judæa. But of this I feel sure, in that crowd of settlements made under the Seleucid house, both of Macedonians and of Greeks, the evidences we should find would be of the same character as those of the Fayum. We should find that the Græco-Macedonian settlers, including the Persians, who were distinctly admitted to the ruling caste, lived in the midst of the aborigines, trading with them, intermarrying with them, quarreling with them, while they were protected from absorption by their Hellenistic speech, and by special courts conducted according to Hellenistic law. The discoveries of the last fifteen years, inaugurated, I am proud to say, by the two volumes of Petrie Papyri which it was my unique good fortune to lay before the world, have manifested to us an aspect of the Hellenic mind of which we knew but little in former days. True it was that these outlying settlements, living as the Hungarians do among the Slovaks, or the Germans among the Poles, kept up their aristocracy of intellect, as well as of race, by the constant reading of the old Greek masterpieces. It is through the fragments recovered from them that we now know what the texts of Homer, and Pindar, and Euripides, and Plato, and Demosthenes were like in the second and third centuries before Christ; and let me add that if there is ample evidence of the considerable rehandling and reëditing of the Homeric text in the second century B. C. which tradition long since ascribed to the great Alexandrian critics, we have also indisputable proof that in the rest our medieval copies represent with excellent fidelity the great masters as they were read in these early books. It is not, however, the establishing of our old faith in the great classics against the suspicions of tampering and of corruption which concerns me here. It is rather the new and interesting fact in this fresh appendix (if I may so call it) to our Greek histories, that of these people we have not only the classical books they read, we have the papers of every-day life. We now know how they made their marriage settlements and their wills, their loans and their contracts, their reports and their complaints; we have now an insight into their official systems of taxation and administration, their banking and their general finance. These are commonplace matters. These letters and reports cannot be

called literature. But they are history, and an expansion of Greek history of the highest interest. There were no doubt Egyptian features, as there were Persian features and Syrian features elsewhere in this civilization, but the whole of it bears the impress of the one great nationality which stamped it upon the world. It has been well shown by more than one modern historian[1] that even the oriental reactions against the West, even the Indian and Parthian monarchies that repudiated Hellenism, owed a great part of their strength to the new life which Alexander brought into the disorganized systems of the East; it is perhaps more remarkable that a Prussian government official, examining the bureaus and the red tape of the Greek papyri, can tell us that all the official life of our own day, with the exception perhaps of the transmission of checks through private hands, can be found among the Greeks of two thousand years ago.[2] It is an inheritance from them through the Roman Empire, which few of us had suspected. Not till we unearthed the clay figurines from Tanegra did we learn how the ordinary Greek lady dressed, in contrast to our knowledge from many ideal statues by great artists how the Greek goddess — undressed. There is as great a contrast between the stately periods of the studied orator and the curt indorsements of the overworked official. I heard not long ago a great English banker,[3] with the self-complacency of his race, attribute the invention of banking to his earliest predecessors in London. He might have learned from the very name "Lombard Street" that he was wrong; he may now learn from a whole literature on the money and corn banks of Egypt, that there were many "brave men before Agamemnon."[4]

When we consider the effect of all these studies and discoveries upon the general influence which Hellenic civilization has had, or will have, on the culture of the twentieth century, we must be prepared to meet the objection more widely felt than formulated, that all this study of lesser and later Greek history is likely to dilute the strong impression which the noblest and best epoch made upon our fathers. There was then a strict selection of what was pure; all that was supposed degenerate and second-rate was neglected, and this is why Greek culture has maintained its supremacy till the present day. Why study Polybius or Diodorus when we have Thucydides and Herodotus? Why study Callimachus when we have Pindar? Are not a few acknowledged masters sufficient to maintain the Greek influence on modern culture? These objections are true, indeed, but only true from a special standpoint. For the education of the young in any literature, we are bound, by natural selection, to choose first

[1] Niese, *Gesch. des hellenist. Zeitalters;* Bevan, *The House of Seleucus.*

[2] Preisigke, "Griech. Pap. Urkunden u. Bureaudienst im griech. röm. aegypten," *Archiv für Post u. Telegraphie,* 1904.

[3] Sir John Lubbock (now Lord Avebury).

[4] Vixere fortes ante Agamemnona. Horace, *Od.* IV, 9, 25.

the great masterpieces. That is a universal rule in this our mortal life, where our powers of comprehension are very limited. If we carry it to its extreme limit we arrive at the word of Scripture, or of the Koran: "Seek first the kingdom of Heaven, and its righteousness, and all other things shall be added unto you." But if our education is to comprehend not merely the perfect form of Greek literature, but the realities of Greek life; if the complete history of that people, whose world-influence waxed rapidly according as the perfection of its artistic life began to wane, be our object, then the view of the schoolmaster and the grammarian must make way for larger considerations. Nay, more, this narrow view has misled the world upon the very issues raised by the pedants. What is decadence, and what is inferiority? We will all concede that there is an inimitable grace in the dialogue of Aristophanes, which even Menander could not equal, but are there not other perfections in Greek life? The two masterpieces, for example, that stand out in the Greek sculpture of the Louvre in Paris are the great Niké of Samothrace, and the exquisite Venus of Melos. They both come from the post-classical age. The marble sarcophagus from Sidon, which commemorates some companion of Alexander (probably that Philokles who was Sidonian King, and High Admiral to the first Ptolemy), is the most splendid and perfect specimen of that kind of art we have yet recovered. That, too, is post-classical. The purist schools had banished from their course, as a writer of decadent Greek, the immortal Plutarch, whom even Shakespeare thought worthy of translation to his stage, with hardly a word of alteration. And when these people conceded to us Theocritus, the great father of the pastoral idyl, as a master, probably because of his difficult Doric dialect rather than his novel subject, why did they conceal from us the exquisite Eubœic adventure (his seventh discourse) of Dion Chrysostom, or the late born, but not the less precious, *Daphnis and Chloe*, whose very author is a mystery? [1] It is through widely different circumstances that the narratives of the Synoptic Gospels, documents of the highest moral quality, have maintained their fame, yet let none of you imagine that their literary excellence did not contribute largely to this permanent influence.

But I need not rest my argument for the expansion of our study of Hellenic into Hellenistic times on these literary grounds, nor is it a mere protest against ignoring great works of literature and of art under the bonds of a narrow and false theory. The political lessons of this later age of Greece have only recently risen into the appreciation of men. When Grote comes to record complimentary votes passed at Athens to a Macedonian ruler or his officer, he thinks it high time for the historian of Greece to lay down his pen in disgust,

[1] These matters are set forth in my *Silver Age of Greece*, in which I have sought to rescue from oblivion these forgotten masterpieces.

and bring his labors to a close. And yet since then Freeman has given us an admirable and instructive volume on Greek Federations; the fourth volume of Hohn's *History*, and the monumental work of Droysen are on the same epoch. It is not in a mere address, but by the studies of many years, that I have shown my own personal interest in this once neglected period. Freeman, utilizing his Polybius as no one had done before, was the first to show how the idea of federation, long obscure and almost dormant in the Greek mind, came into vogue when the little city states of Greece found great kingdoms rising up around them. To remain isolated after the old Greek fashion meant ruin; some form of combination, some accumulated strength, was necessary to preserve not only the political but the economic existence of small states. This fruitful idea, first carried out on a considerable scale by the leagues of Ætolia and Achæa, then with great effect by Rhodes, failed on the whole, and failed on account of the ingrained conviction of the Greeks that every state which voluntarily entered a confederation was entitled to secede from it at any subsequent moment. If it could not be brought back by argument, had the rest any right to bring it back by force? Need I say one word more in this place to enforce the world-importance of this problem? Seeing that the Greek sentiment, as might be expected from small separate cities, with long traditions of independence, and perpetual jealousies of their neighbors, was always in favor of secession, there remained no other alternative than to combine under a foreign monarchy. For this, while it granted local liberties, from indifference or from policy, defended its subject states by a superior military force, and prohibited those local wars, which were the bane of the Greek world.

If the history of the rise of federations has at last received due attention, that is not the case with the resurgence of the idea of monarchy, not merely enforced upon the Greeks by their Macedonian conqueror, but defended in many books and tracts from Xenophon's *Cyrus* down to the tracts of philosophers *about royalty* (περὶ βασιλείας) of which many fragments and notices remain. This once hateful form of government was not therefore thrust upon a democratic world against its will, but recognized on trial to be the practical solution of difficulties which were bringing political ruin upon the Greek world. How far this great change of ideas prevailed appears from the readiness with which even skeptical democracies lavished not only royal titles but divine honors upon the new king. Never was the Divine right of hereditary monarchy so quickly and readily adopted. It was, in fact, far safer to have a distant king, who theoretically could do no wrong, than a present tyranny of pauper fellow citizens, with irresponsible power to do practical mischief at every assembly they chose to hold. It was far better for the herald's

office to invent a divine pedigree for an adventurer, than to have the Divine right of kings questioned and the novel virtue of loyalty to the reigning house chilled by skepticism. For thus only could even temporary peace, even local liberties, be maintained in that seething and tumultuous age. A new Cadmus had sown the dragon's teeth, and the Greek world was red with the warring harvest. The anodyne which that world adopted gave the framework of the ideas to Augustus Cæsar on which he built up the Roman Empire, and established the Roman Peace.

Here I pause, out of breath with the effort to compass so vast a subject, to cover so long a course.

In conclusion: There are three great requisites for the further development of this branch of human learning. First, the diligent prosecution of the ordering and criticising existing materials by a number of specialists, each to his own department. Of this first we may feel quite assured. For our age is indeed a diligent age, and has learned how to collate and to edit. Secondly, more ample endowment for making special and costly researches on famous historic sites. What new material might not accrue to us if we had leave and means to explore Sybaris and Cyrene, Antioch and Alexandria? And here too we may have good hopes, for our age is indeed a generous age, and the princely donors of thousands for modern science may yet be persuaded that with hundreds devoted to historic research, they will add not less to human knowledge, and ten times more to the gratitude of men.[1] For human culture must have many sides, and it will be an evil day when the knowledge of positive science leaves no place for the knowledge of human society. But let no man persuade you that ardent diligence and ample endowment are enough without the last and greatest postulate which I shall make, — the encouragement of a bold, constructive imagination, which carries on its inquiries not at haphazard, but in order to verify or to refute some large theory of what things ought to have been, or what men ought to have done. It is this quality which makes the difference between the mere scientific drudge and the great scientific thinker; it marks the greatness of a Champollion and a Hincks, no less than of a Newton and a Laplace. And if it cannot be the inheritance of every student, being indeed the exceptional and precious gift of the gods, remember that it cannot only be encouraged and nurtured, but discouraged and starved by the education of men. Through it, and through it alone, can you understand the real meaning of the pregnant apothegm: *Prudens interrogatio dimidium scientiae.*

[1] If, for example, the classical public, who are not millionaires, would support the Græco-Roman branch of the Egypt Exploration Fund with numerous subscriptions, the momentous and epoch-making work of Messrs. Grenfell and Hunt might assume larger proportions, and many texts would be saved by them from the lamentable fate of being dug out and lacerated by ignorant natives, and sold in scraps to equally ignorant travelers.

PROBLEMS IN ROMAN HISTORY

BY ETTORE PAIS

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Any one who will follow the development of the ancient political history of Greece and Rome, and closely observe what were our conditions from the Renaissance to the close of the eighteenth century, will easily recognize that the nineteenth century, so glorious in the renewing of philosophical, natural, and social studies, has not been less great in this conspicuous branch of human knowledge. Thanks to the methodic study of the literary texts, of the genesis of sources, and to the laborious collection of infinite series of monuments; thanks to the works of Boechk, Grote, Niebuhr, Droysen, Mommsen, and of the great number of their followers, the political knowledge of the ancient classical world has advanced so far as to give us an almost complete view of that civilization. We have precise narratives, which ought to be of the greatest utility, not only to the professional scholar but also to any cultured man. And close to these narratives, inspired, as in the case of Mommsen, even by the cult of form, we have a long succession of deep works on all the branches pertaining to kindred sciences; from chronology to numismatics, from public law to the history of art and of philosophical opinions. Any one, in fact, who with optimistic views will examine the enormous scientific publications made in Germany, France, England, and America, may almost be drawn to conclude, at first impression, that little is left to be done, and that man's mind, always seeking new problems, may find little to reap in a field so completely cleared. This impression is perhaps less strongly received from the study of Greek political history than from the study of the Roman, where the wonderful energy of a single man appears to have left almost nothing for his fellow workers and future generations to gather. You will understand my allusion to Theodor Mommsen, the man who for half a century has held undisputed the sceptre among all cultivators of history and classical law, the man who has not passed over in silence any of the arguments regarding the life of the Roman people.

Mommsen, in fact, after having silenced the voices of his opponents, has seen his triumphal chariot followed by the best energies of two generations of learned men. But it looks as if it were an inevitable historical necessity that to the works of learned men should be reserved a fate quite different from that which is decreed to the works of artists. The greatest perfection reached by a poet or a painter has not as its immediate effect the disdaining of his predecessors' work. Human curiosity is, in this case, rather urged to examine and to appreciate the less mature and perfect work which marks a salient point in the artistic development. On the contrary, it is quite rare not to see those same laurels gathered by the greatest scientists, rapidly fade and drop. And the history of science, keeping firmly to the vital ideas and criteria which make the works of the most eminent authors of the greatest importance, gives only a flying glance to the older works, which have spread in their times the ideas which had to produce the new germs.

The direct efficacy of August Boechk has been now transmitted in a great measure to other writers, and though the impression left by Mommsen, who, following close upon Boechk, filled with him all the nineteenth century, is still lasting, it is clear that also through the ideas and infinite researches which emanated from his great mind, we are on the eve of a new and great intellectual movement, a movement which is alimented and increased by the new material which is being discovered in every part of the ancient classical world.

In these last years we are coming into possession of new Greek histories, which are destined to make the world forget the ones written by Grote and Curtius; and new ideas and problems are already fermenting in the human brain, which will necessarily lead to new histories of the Republic and of the Roman Empire, quite different from those of Mommsen and Gibbon.

The opinion generally accepted that the material of the classical world is now altogether determined and closed, and that the study of historians should be limited to penetrating literary examination, discussed word by word, and to the observing of the old materials under new points of view, has been altogether destroyed by the fortunate discovery of papyri which, thanks, especially, to English diligence and learning, are coming to us from the very bowels of ancient Egypt. And to the papyri which illustrate every part of the public and private life of the ancient world are added the results given by the excavations which illustrate both the mature ages and the first origins of civilization among the classic peoples.

One of the most salient characteristics of the nineteenth century has been, in fact, the patient research of the embryonic forms of all cosmic life. It was quite natural that from this universal tendency the study of classic history should not have been exempt; a study

which, also for the past, had been constantly determined in its genesis and in its ulterior development by the prevailing currents in all the remaining sciences, and by the changing of political and philosophical ideas. The study of classical antiquity from the end of the sixteenth century through the eighteenth, especially in Protestant countries, has been the substratum of political and civil education. When the triumph of liberal ideas was obtained in Europe, the science of antiquity did not become the object of mere erudite curiosity, but was taken as the foundation and the ideal of literary and moral education. And it is in this blind and exclusive admiration of the life of the Greeks and Romans that one must trace the reason why their civilization was considered quite different from the Eastern, while the Greek one was supposed autochthonous, sprung by its own virtue, like Athena completely armed from the head of Jove. Thus the declarations of the ancients were considered erroneous; though, far from feeling any shame of this contact with the oriental world, they insisted particularly on it. And the same insistence and warmth, which would be urged to prove the constant purity of blood in the lineage of an aristocratic family, was used in attributing a purely Hellenic origin to the myth of Herakles, and to deny the Phœnician descendance of Thales. The merit of having overthrown the theories which have had for so many years the preponderance in the field of European science is undoubtedly due to the various scientific European and American missions, and to many learned Englishmen. And without letting ourselves be blinded by the exaggerations to which every reaction leads, we must follow with great love the discoveries made in Egypt, Crete, Greece, and Sicily, revealing the existence of civilization of the Mykenæan type, which demonstrates to us, with increasing strength, the truth of the aphorism that in the world nothing is isolated, but everything is in relationship with preceding or with parallel phenomena. Scientists are to-day better disposed to listen to the demonstrations of Ginzel on the astronomical discoveries of the people of Babylon, and on their efficacy over the posterior doctrines of Hipparchus and Ptolomaeus, just as they have no more difficulty in recognizing the possibility of ancient political relations between Greece, Asia Minor, and Egypt. And it is to be hoped that new discoveries may not only benefit the development of material civilization, but may one day be of great advantage in illustrating the genesis of the Greek conscience, which is still substantially dominating the modern world.

The great and luminous discoveries which to-day have thrown light upon the relations between Egypt, Asia Minor, and the countries inhabited by the Hellenes, were to have a necessary rebounding action in the researches regarding the origins of civilization and Italian history.

The most recent scientific criticism had refused the mystic narrative of the Pelasgians. It is then clearly understood how some scholars came to defend such traditions. However, it must be added at once that to this day these attempts have not been very fortunate. The excavations at Norba in the territory of the Volscians, with the hope on the part of some to attribute to the Pelasgians the ancient Italic walls, have only served to sustain the position of those critics who assigned those same walls to a much more recent age. And the same results have been obtained from the explorations in Etruscan Volterra. The discoveries of material of the Mykenæan type in Sicily and also at Tarentum are in relation with the commercial diffusion of products, which, in the third Mediterranean basin, reached the first dawn of Greek colonization, that is the beginning of the eighth century. Likewise all attempts to set back, by many centuries before the eighth, the most ancient historical forms of Italy have completely failed.

No wise critic can seriously consider the attempt made by a learned Swede to establish a chronology which goes back two thousand years before Christ, by means of various types of bronzes and vases, which lasted in an irregular manner according to the various countries, more or less accessible to new commercial influences, more or less slow on their way to civilization. A few years ago people took into consideration such theories which, basing themselves on the study of Æmilian palisades, caused the Italic founders of Rome to come from the north of Italy. The recent discoveries in Greece, in the Ægean islands on the coast of southern Italy, are instead tending to prove that such archæological discoveries can contribute to establish the history of the commercial relations, but that they have nothing to do with the ethnography of the most ancient Italic races. I do not stop to examine theories already accepted as certain,—of palisades pitched even on dry land for mere reason of rite, and of Ligurians recognized in various parts of Italy merely from the crouching position of the corpses, etc. Common sense knows what value to put on such aberrations. Archæological excavations tend rather to prove that the Italian civilization, born on the coast of southern Italy, gradually spread as far as the plains of northern Italy and quite to the base of the Alps, where the less frequent contact with the East, the continuous emigration and impositions of barbarous elements coming from the north, were maintaining stationary forms of civilization, which had already disappeared from the south.

Among all the excavations of Italy, those which have been so zealously carried out in the Roman Forum by Giacomo Boni are to be especially mentioned. These excavations have been, for some, the revealing elements of a civilization anterior to Romulus himself. But they proved, after all, nothing of the kind. We are lacking all

data to establish whether those bronzes and vases should be of the tenth and ninth, rather than the eighth, seventh, or even sixth century, B. C. Other excavations would seem to prove that the typical forms of the so-called Numa vases lasted till the Empire. The only result altogether certain is the first confirmation of the ancient texts, which said that at the outskirts of the Forum there was a Sepulcretum. And from this, even before the excavations, I had obtained the proof, solemnly confirmed to-day, that the Forum was added to the city long after the age of the seven kings.

I do not think it is now the moment to speak of the famous Archaic Latin inscription found under the Niger Lapis. All the attempts which have been made to interpret it have been fruitless. Considered from the palæographical side it may belong either to the sixth or fifth century, or even fourth century, while from the external form and for the disposition of the writing it recalls the Capuan monuments of the end of the second or more probably at the beginning of the first century, B. C. No reasoning of any critic can possibly demonstrate that the *rex* remembered there is the political *rex* of the royal age rather than the *rex sacrorum* of the Republic. As regards history, properly said, the inscription teaches us nothing. The excavations of the Forum have, however, demonstrated what I had already affirmed, namely, that the arched *cloaca maxima* is not a work belonging to the royal age, but rather to the Republic.

In order to solve the most ancient problems of the history of Italian civilization, some people have turned to the investigation of linguistics and anthropology rather than of archæology. It has been easy for an able German linguist to criticise the weak point of the theories founded on craniological and somatological elements. However, it has been easy to a great Italian linguist to find traces of ancient ethnology in the phonetic persistences among the dwellers of various Italian regions; and the anatomic examination in the structure of the different races in the Peninsula will certainly lead one day to brilliant results. The persistency of the Celtic reveals the expansion of this people; and among the mountains of the Garfagnana the Ligurian race, which before the Etruscan dominion occupied such large part of the Italian, Gallic, and Iberian regions, still holds compact in its somatological integrity. Thus, on the slopes of the Apennines, surrounding Campania, just where the Sarno takes its start, one finds in the same compact condition an indigenous race unmodified by the successive superimpositions of the Samnites and Romans. And I willingly agree with Professor Julian when he says that a corpus of the toponomastic of the ancient world would lead to most brilliant results.

Naturally these studies are not yet perfect, and hurried conclusions may lead to bitter delusions. Certainly a great delusion must have

been felt by certain learned men who, after having spoken with all certainty of the immigration of people coming from Asia, basing their affirmations on the presence of jade-axes, were suddenly informed by a mineralogist that the same rock was to be found in the Alps. Bitter delusions will come to those whom the Etruscan sphinx devours daily; and my opinion is that people insisted with too great facility on the non-Aryan character of the Ligurians, since I have already brought to observation that the etymology of the indigenous name Genoa (knee), as Ancona (the arm), Eryx-Verrucca (the hill), shows the premature character of these conclusions.

These delusions must not, however, prove discouraging, since there is no science which has not improved through infinite uncertainties and errors. We must, however, admit that regarding the problem of Italic origin which has attracted and still attracts such a great number of studious people, we have not yet reached any series of sure and complex results, partly from lack of data, and partly from faulty methods.

Many people who busy themselves with the primitive strata which precede the true and real political life ignore classical culture, which is a fundamental guide, and those who represent it are not always in a condition to appreciate the anthropological and social problems.

Regarding the archæological part, researches have not been directed to just aims. The great majority of learned Europeans and Americans, always running after new and more ancient material, turn to the excavating of Samos, Miletus, Crete, and Lycia, whilst Italy is still quite far from being all explored. And yet on the very boundaries of Latium and Campania, where the ancients placed the mythical seat of Circe, and the tombstone of Elpenor, notable ruins exist neglected even from the times of Polybius. There, just as on the little hill standing above the ruins of the Roman Minturnæ, are preserved the traces of what is, perhaps, the most ancient stratum of Greek colonization in Italy.

The problems relating to the most ancient Greek and Italic civilization are waiting for light from the spade of the excavator; on the other hand, those regarding the most ancient social and political structure wait their light from the comparative study of public law and economy. But even in this respect what a difference there is between the history of ancient Greece and that of ancient Rome! The marbles of the ancient Acropolis permitted Boechk and his followers to reconstruct the financial history and the maritime hegemony of Athens, the texts of the comedians and of the orators have permitted Belock, Poehlman, Francotte, and others to treat the most difficult questions relating to financial and social organizations. Paul Girard has succeeded in writing a good book on the ancient land

property in Greece. The material lately illustrated by Wilken proves that new researches may still be made. In the Roman field, instead, there is nothing that can be in any way compared to this. No history whatever on land property during the Republic is to be had, and if we want to be sincere, we must admit we do not possess even a good guide for the more ancient social and political institutions. We have, it is true, ancient and diffused narratives on political struggles, which are the foundation of a long series of modern manuals on law and history. But such narratives are based on spurious material, and even the treatises on Roman political law written by Mommsen (for the period from the age of the kings to the beginning of the Punic wars) is based upon falsified material. I do not insist on this point, as I would find myself obliged to repeat demonstrations already given by me elsewhere. I hope at any rate to be able soon to publish my researches on the value of chronology, on the Fasti and on the public law of the most ancient Roman people, in the only way in which it can be really obtained, namely, through integrations and comparisons. I say integrations and comparisons, since the study of public law and of the social conditions of a nation cannot be made now, as in the past, through the simple knowledge of the material relating to that single people, no matter how minute and deep. If there is a matter which should be deeply known by the student of ancient civilization, it is the comparative history of the law of all peoples beginning from the customs in the savage state, to the true and proper law of most civilized people. Under this aspect Sumner Maine's researches, though incomplete, have brought a greater advantage to studies, than the pretentious works of many scholars of Roman Law. And only by such comparison, to which must be added a good knowledge of the classical material, shall we, some day, be the possessors of a treatise on Greek public law, which is generally desired. And the study of law and comparative sociology will evidently give us the history of the ethic development of the classical world, which we lack, and which is the surest foundation in order to understand the reasons of political events.

Fortunately for those who will apply themselves to the history of law and of Greek and Roman social institutions, the Egyptian papyri and the discovery of new inscriptions, which explain intimate connections between the two great phases of ancient civilization, will bring new and wished-for materials. Every one knows that an institution like that of *aurum coronarium*, of the *colonat*, and of the *frumentationes*, finds its precedents in the history of Samos, Miletus, and Alexandria; and the original studies of Mitteis have shown what quantity of material for deep researches there is in the comparison of Roman with Hellenic laws.

It looks as if the discovery of the papyri were destined to give

results in the Roman and Greek fields. But if the philologists have rejoiced in the discovery of the texts of Aristotle, Bachylides, and Timotheus, the Latinists must be satisfied with a long series of contracts, leases of rustic farms, constitution of dowry, contracts of loans and emphyteuses. There is no hope of finding a book of Polybius or of some other historian, precious for us, but less cared for by the ancients on account of the style in which it was written. We have this discouraging outlook also from the examination of the archæological excavations made in the ancient world.

The soil of ancient Italy is certainly not exhausted, but nothing makes one hope for discoveries similar to those of Greece and Asia Minor; and the interest of the studious now turned to the oriental world does not find it worth while to explore the adult forms of the Græco-Roman civilization which alone is offered by the Peninsula. We deduce from this that the study of Italian history at the time of the free republic does not present anything new for investigation, while all the periods of Greek history have been, one might say, transformed, and the history of Hellenism, thanks to the works of Mahaffy, Belocph, Niese, Strack, Bouché-Leclercq, and many others, has been rebuilt from the very beginning. Let us guard ourselves, however, from drawing too pessimistic conclusions.

The study of social and political life in the Roman Republic has not presented any material for new treatises nor any original proceedings, for the reason that the problems which contain the conclusion of the subsequent *corollaria* had not been well solved. The life of the Roman people, far from constituting a characteristic phenomenon, as it was conceived for centuries, and in part was understood by Mommsen himself, is but the last and quite mature phase of that civilization which continued and transformed the preceding activity of the East. Laying aside the Roman annals which offer a premature originality obtained through falsification, there remains only a late civilization which grafts itself on the developed Greek world.

In Roman civilization there does not exist a political institution or situation where there has not been repercussion or modification of the anterior civilization of Sicily or Magna Græca, and later of Greece itself and of the Hellenistic states. Only the full and perfect knowledge of the Greek world permits a clear understanding of the Roman one. Thus it is clearly understood how a Roman history can be properly related only when the great problems of Greek and Hellenistic history will be solved. If, however, in the half-century which has succeeded to the first appearance of Mommsen's book, there have been published at rare intervals some works which have enlarged the field of our knowledge, this is not due to a lack of material adapted to problems, but to the want of preparation to solve them. We lack a good history relating to the period of the Gracchi, as well

as one on the Social Wars; we have quite incomplete expositions on the civil wars or on the conditions of the Roman provinces during the Republic.

But I do not think I am too much of an optimist when I maintain that the new view that we already have of the Greek world, and of the improved comparison of law and of the institutions of other people, will have the effect of giving us in the near future a new and quite original history of the Roman Republic.

The examination of those problems which are treated in the history of the Empire is leading us apparently to entirely different results.

The wonderful energy of Mommsen, the great compilation of *Corpus Inscriptionum Latinarum*, the activity of a great number of learned men belonging to all nations who accepted Mommsen's fundamental criteria, seems to have directed the problem of the Empire to a definite solution. To the conception which, on the general progress of the Empire, was given by that prominent scholar, is to be added that of those writers who treated the history of the single provinces.

In regard to the technical side, the researches on the administrative, financial, and military organizations, and on public cult, made under the guidance of Marquardt and Hirschfeld, lead to precise reconstructions which are perfect in many respects.

It is true that the Roman world has not yet completed the bringing to light of the epigraphic material hidden in the bowels of the earth or dispersed over lands not yet explored by the historian. It is also true that though papyri have increased in a great measure the knowledge of private law, it may from one moment to another give us new and important information also on public law. However, so far as we can see, the general lines of Roman administration will not be much modified.

Nevertheless, all these previsions do not lead us to consider as solved the problems concerning the political and social reorganization of the Empire. Among modern writers, and especially among those who have followed the ideas of Mommsen, the general tendency has been to glorify the happiness and welfare of the Roman world. They have based themselves on the existence of the colossal ruins scattered in all the provinces, on the regularity and perfection of administrative and military organizations, on the extension of commerce, and on the enormous development of riches, rather than on literary texts which do not seem always to help their thesis.

The discordant voices of ancient authors are interpreted as interested protests and outbursts of political parties. The happiness of the Roman Peace and of the Imperial government contrasts, they say, with the hardness and rapacity of republican oligarchy; and the folly and cruelty of princes is compensated by the upright provincial

administration. In all this there is evidently some exaggeration, and a new verification of the problem imposes itself. The grandeur and the diffusion of temples, basilicas, baths, theatres, and aqueducts in all the colonies and municipalities of the vast Empire is not sufficient to prove that the general happiness and welfare were greater there than in the capital, which under the different bad or good emperors continued constantly to enrich itself with new edifices. Thus from the wealth and elegance of the Roman churches of the sixteenth to the eighteenth centuries nobody certainly would dare draw proofs in favor of the moral power of the Papacy during that age, and of the general happiness and dignity of the citizens of that state. And just as it is proved by monuments, inscriptions, edifices, and institutions, that the life of the capital was reproduced in a smaller way in the provinces, so it is quite natural to think that also the moral and civil condition should have been reflected there.

The *plebs* in the capital lived on alms, at the expense of the provinces, and there a municipal nobility composed of a small number of families uses to its advantage the resources of the community. This municipal nobility will enrich the city with monuments because it will find for itself a way of consuming at its leisure the municipal income. In Rome, as in the provinces, they endeavor to repair the loss of the free citizenship by alimentary institutions; but there can never be found a spirit of charity for the poor and the oppressed; something is lacking to recall even the hospitals which were attached to the cult of Greek Æsculapius. The *sportulae* handed to the numerous and hungry clients under the show of power, by the disdainful and wealthy *patronus*, makes one naturally think of the alms which till the latter part of the past century were justifying before the *plebs* the riches and idleness of the friars in the Italian convents. And when one thinks that Vespasian, certainly one of the best Roman emperors, found nothing better than to redouble the taxes on the provinces, and imprudently to sell absolutions, either for the culprit, or for the innocent, in order to restore the finances of the state; and that he chose as administrators of the provinces magistrates from whom he would draw, as from sponges, the ill-acquired riches, one may well ask what was the nature of this general welfare. At any rate Hirschfeld's researches have put in evidence how little was done during the first three centuries of the Empire to secure life and property in Italy and in the provinces. Tacitus has made us hear the voice of protest of the Roman families only. During the Cæsarean despotism all free speech was silenced; but if the voice of the provincials had reached us, we could know how many base deeds and adulations determined the raising of statues to the good Roman governors. We have not as many honorary inscriptions for good emperors as for the wicked Caracalla.

In reality, under the Republic as under the Empire the provinces are but the *praedia populi Romani*. The Roman provinces and municipalities are only a vast field which a clever administration makes use of to enrich imperial functionaries, and the classes directing the community. To derive from these indications a general happiness would be equivalent to affirming that the remuneration of the workers is great where the shareholders have a large dividend, or if, in regarding the economical side, we turn to the noble spheres of letters, of arts and sciences, we see everywhere the signs of a great and rapid decadence. The age which according to general opinion receives its light from Augustus, and which according to the poet's song marks a new century, is but the beginning of the last phase of a great civilization which, already developed with the Greeks in the eighth century, dies with Diocletian and Constantine. Notwithstanding what has been said to the contrary, the traces of decadence are visible not after the Antonines, but with Augustus himself, and with the incapacity officially and wisely recognized by him of conquering Britain, restraining the Germans, and taming the Parthians. Such decadence is after a few generations quite visible in art. No great poet succeeds Virgil. Tacitus marks the end of the great Roman historiography. Art reproduces in large and pompous manner crystallized forms, and the cold and artificial religion of state suffocates and dries any frank and noble aspiration in the human soul. Free speech is silent everywhere; cold rhetoric and declamation succeed to eloquence. And in sciences, with the exception of the development of great public edifices which, as the history of Apollodorus demonstrates, is always under the high inspiration of Greek doctrine, all is transformed in a pure empiricism drying the germs of theoretical speculation. Geometry has become surveying, and medicine, judged unworthy of being studied by a Roman citizen, is left to the Greeks. Ethics and philosophy are transformed into law and regulation, which obliges all to obey the will of the legislator, who is clever in law, but more so in handling the sword. And the greatest pleasure of the Roman society is not to hear, as in the fine Athenian times, the pricking playfulness of Aristophanes or divine verse of Euripides, but rather to assist at the games of the Circus, where the blood of the dying gladiators and that of the wild beasts stir up voluptuousness and a desire for struggle. There still remains military glory. But patriotism is already changing the career of arms; Italians are despoiled of their weapons, and the legion, according to an ancient inscription from Aquileia, becomes *barbara*. In the Roman society there is no place for the unwealthy, and it is quite natural that the humble and afflicted should rapidly contribute to render vigorous the incipient Christian society which, having later become powerful, conquers and then associates itself to the decaying Empire.

The love of war and glory still lasting through centuries in Europe, the greatness of the monumental remains, and the inheritance of Roman political organizations also accepted by the Church, the Roman laws which absorbed all the legislative work of the ancient world, the cares for the defense of the Rhine, Danube, and of Asia Minor, the song of Virgil, the prose of Cicero and Livy, are such great events that they could not be entirely forgotten, not even by the rough Middle Ages. The comparison between Romanity and the subsequent barbarism of Europe is enough to explain the reverent admiration which also in these last centuries has existed for the great merits of Roman civilization. But an exact comparison of the origin of all ancient civilization and the ties that the Latin world has had with the Greek naturally leads to a better understood and measured admiration. When studying the light we must not neglect the shadows. But still recognizing all the merits of Roman civilization, we must keep in mind all that was done by the preceding nations. Rome civilized the coast of Northern Africa, but we must not forget, as some critic has done, the preparatory work of the Carthaginians from whom Rome learned for the first time the arts of agriculture. It is Rome that has the merit of having civilized the Gauls, but we must not pass over in silence the extended and beneficial preparatory work of the Greek Massilia, which for its civil institutions and its commerce was once quite superior to Rome, and even during the Empire was justly chosen by Romans as a seat for the moral education of her sons. An exact balance of all that has been produced by the Roman civilization has not yet been struck. This examination will, certainly in many instances, prove of honor to the Italian people, to whom the West owes the transmission of light on the old Hellenic civilization. Many statistics and comparative works that are still needed, for instance, for the Iberian Peninsula, have not been written. And such researches will have to consider density of the population, the true condition and transformation of slavery, the diffusion of the Eastern cults, and finally of the first Christian society. But among all the problems which have not yet been solved, the most difficult and the most complex is always the one on the value of the political work of the Emperors themselves.

Mommsen rightly observed that legend is found just as much in the life of Fabricius as in the anecdote of the Emperor Gaius; and as Willrich has recently demonstrated, many data of Imperial traditions deserve a new revision. But in order to resolve the problem of authenticity in the ancient tales, it is not enough to establish researches, even diligent ones, on the discordance and on the presumable value of the historical sources. Such complex problems can be solved only by the examination of other historical periods. The critic who studies the Empire is immediately impressed by the ferociousness of the

degenerate princes. But in the end the cruelty of Tiberius is not greater than that of Sylla, and the intrigues of the courts of the Seleucids and Ptolemies are useful in making one understand the plotting of the Palatine Imperial Palaces. And without having recourse to the easy but unhealthy remedy of fixed formulas taken from premature treatises on the historical development of all societies, it is clear that in the study of the ancient Germanic races or of the oriental monarchies one will often find material adapted to clear up problems of the ancient classic world. Such study, for instance, can be useful to the solution of the controverted problem of the *Scriptores Historiae Augustae*, much more than the infinite series of proceedings which will be expounded by the philologist, and more than an analytic dictionary of those texts.

At any rate, the history of the Empire contains problems which can be referred also in great part to posterior history. The modern historian lives in an epoch when war is generally considered as an evil to be avoided; the scholar who is not accustomed to arms spends his time between the documents of the archives and the ruins of the excavations. He does not feel the necessity of connecting military events which he is not in a condition to understand. If necessary he turns to the opinion of some military person more or less used to interpret and to understand military texts. Anyhow modern age is tending to solve problems of social character, and critics, generally, if only for the love of novelty, ascertain and follow the tastes of their contemporaries. And more than to the problem of moral conscience, which determines the function of the highest human energies, they try to transport, in the ancient world, those facts which are tormenting modern societies, without sufficiently taking into consideration different conditions in culture and faith, in density of population and in social organisms.

An historian of the first order, Polybius, in finding fault with historians given only to the study of books, praised Ephorus for his being in condition to describe a land battle or a naval operation, just as Gibbon's contemporaries appreciated his military knowledge. Polybius himself, quite an expert in arms as in political management, was not wrong. To narrate the destinies of the world, determined by the result of military events, without being in a condition to interpret them, is like writing a history of literature and sciences, giving only the names of the authors and the titles of the works, without examining the contents. To speak of Alexander and Hannibal without considering the merits of their strategy and tactical movements, means to give up a good part of their work, and not to understand the nature of the military states in which those same events happened, and for which they were written. And this fact holds more for the Roman world which lived always in arms than for the Greek civilization.

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Certainly the modern historian must not limit himself to narrate that which, according to the ancients, formed the essence of their history. He has, after all, the duty to retrace those elements of which they had not a full knowledge, and which are useful in explaining the complex development of humanity. But in such a case, besides the study of economic forms, it is necessary to turn one's attention to the development of religious and moral opinion and to the history of arts and sciences. And the investigation of the reasons which determine the reciprocal action of all these elements and the preponderance of one over the other, according to the different ages and places, constitutes the most complex problem which the historian of the ancient world is called upon to solve.

The method of making chapters in literary, artistic, philosophical history, from the narrative which in substance is constituted of external facts, is now out of date. The history of a people, just as the history of an individual, is subject to transformations which modify its activity. If the history of the Roman people has remained essentially military and political, that of the Greek races presents instead the phenomenon of different elements combining with one another. The literary and artistic history of the Athens of the fifth century balances that more strictly political, but the development of criticism and of sciences constitutes certainly one of the most important characteristics of the age of the Diadochi. Thus for the period of the Spanish preponderance, the Italian nations will very rarely give occasion to speak of arms, but will offer, instead, material for art, for the study of the works of Galileo and of Bruno.

Politics, military art, law, economy, fine art, science, from the historical point of view, form a complex whole before the history of the ancient and modern world. And since the unlimited increase of knowledge in the branches of learning makes this task more and more difficult, it is evident that our education, freed from useless teachings and old prejudices, must be strengthened by the study of the sciences. But it will not be enough to reform the organization of our colleges, we shall have still to break the barriers of our faculties; because if it is true that no science can improve without long and detailed technical researches, it is also true that the studies of specialists contain rarely important results, unless they are guided by large conceptions and are coördinated with various and kindred sciences.

And among the sciences which are destined to make future historiography improve, politics comes first. This recommendation may at first seem ingenuous or altogether useless, unless one consider how, after having naturally exempted some famous works, nearly all the modern production in the field of classic antiquity is due to the activity of the philologist. The necessity of investigating the literary

texts, of long and detailed researches on the reciprocal dependence of the sources, of interpreting epigraphic texts, and now more than formerly, also the papyri, render the help of philological training precious and indispensable.

But it is also just to recognize that in nearly all the historical production, due to the philological school, the political sense is nearly always missing.

It is then necessary to see to it that those who will be called upon to solve the future problems, though dedicating themselves to all the sciences which constitute the historical organism, should take part in political life, avoiding, however, becoming victims of those prejudices which guide the parties that are the natural product of the political atmosphere. And of all these preconceptions one of the most damaging is that born of blind patriotism. Few among the human sentiments have contributed so much as patriotism to keep alive the remembrance of historical facts, and to promote the increment of researches in the past. But it is not less true that this sentiment has brought the greatest disadvantage to historical truth.

It is superfluous to recall examples of the first cases; it is much more useful instead to observe in how many instances the objective history of a people has been usefully told by strangers and even by rival nations. If Polybius was able to expose a narrative of Roman events, as no other Italian historian could, this did not arise only from his political culture and clear-sightedness, but also from the fact that, belonging to a conquered nation, he was not blinded by national pride. This greater objectivity distinguished also the political work of Trogus Pompeius from the annals of the Paduan Livy. The horizon of the eloquent Livy did not extend beyond the Urbs and Patavium, while Trogus Pompeius saw the Roman deeds from the point of view of universal history, and therefore gave to them a better proportioned part in the history of the world. If the histories of Theopompus or other authors known to Plutarch had come to us, we should certainly have quite a different history of the Persian wars from that of Herodotus, inspired by the glorification of Athens. Germany, with Ranke's and Von Sybel's, has given the best histories of the Catholic counter-reform and of the French Revolution. And we do not need to mention to you the value of Prescott's and Irving's studies on the most brilliant periods of the Spanish domination. The patriotic historian is bound by a thousand prejudices of education, and is not always in condition to judge with perfect clearness the events of his country. Even if he be free from preconceptions, he feels tightly bound by many considerations, and if he says all the truth he exposes himself to censure. Still the treating of the same arguments with stereotyped views does not lead to any scientific results. What is of advantage to the progress of sciences and arts

is freshness of impressions and new energies which substitute themselves for the old ones. And since you Americans, with a new and unfailing impulse of youth, open your universities to the study of all the problems of old Europe, let us hope that with your work a more perfect knowledge of the ancient world may be reached. Like all young and robust organisms, you are naturally inclined to break down the tendency toward routine which too often binds the work of European scholars. From the contact of old with new theories, there will certainly come out sparks which will be destined to throw new light on the infinite problems of the classical world. The study of the early belief and social forms of America has contributed to explain questions of ancient mythology and classical anthropology which remained inexplicable mysteries for generations of learned men. In turn the political study of old Europe, and especially of the classical world, will make more clearly understood the destinies to which the United States of America are called.

In fact, the conception that political history should be studied by itself, with no other aim but mere curiosity, must be rejected, as well as the idea that any other science is not destined to have a practical application in life. The purpose of this great Congress, to which you have called all sciences to be represented, pure and experimental, theoretical and practical, is the best guarantee that the scientific, American society will not be lost either among the fogs of abstractions or the vulgarity of empiricism. If among the decadent nations or those about to decay, men who are without ideality and who ignore art or science are put at the helm, in the countries which are destined to a prosperous future public interests are intrusted to those who best understand the history, and therefore the hopes, of their country.

It is not strange that nearly all Roman historians should have been statesmen; and statesmen were Machiavelli, Macaulay, and Bancroft. Without knowing the biological precedents the cure of an invalid is not possible, just as without a long experience of the past it is not possible to provide for the future of nations.

The study of old Europe, its glories, and its errors, is a sacred patrimony which she divides with the United States, which have the task of forming a new and great civilized society. The Roman and Greek civilization is a great part of this patrimony, and is worthy of your cares, because it contains the best part of institutions and traditions which you are called upon to study and partly to follow.

The immense space of sea which separates you from Europe and from Eastern Asia, the lack of danger of an invasion from the north, and even less so from the south, seem at first glance to place the United States in a situation quite different from that of the old European civilization. But the speed which will be attained by steamers in the near future will render these distances proportion-

ately smaller than the Ionian and the Tyrrhene seas were once for the Athenians navigating toward Syracuse, and for the Romans fighting against Carthage.

Greece and Rome had in the Mediterranean a position which recalls, in part, the interoceanic situation of the United States. They transmitted successively to the West the civilization received from the East, and the United States are already called to take great part in the transformation of the yellow races.

The economic and social foundation of the Romans was based on slavery; you, instead, have freed the negro from bondage. But the complete participation of the latter in your political counsels constitutes one of the greatest problems which you are called to solve. And it will be all your glory if you shall find a better solution than the ancient world. The immense development of your finances, which seems fabulous to us old races, reminds one of the similar enormous development during the Empire. You have the daring and practical mind of the Romans, the greatness of their works, and the firmness of their character. But the love for sciences and arts protects you from the danger which threatens the plutocratic societies. This love for science and art, which causes you to multiply your universities, libraries, and museums, takes, however, its first and more vital inspiration from that brilliant Greek civilization which transfused itself into the Italian Renaissance. And while in so many parts of Europe old forms of social organizations are still living, you are, on the contrary, destined to maintain brighter than ever the most luminous flame of the old Greek and Latin civilization.

The cult of that freedom which you placed as a glorious symbol just where the Atlantic touches your shores is an omen of unhampered enterprise and active life for all those who, coming to you from distant countries, have the aspiration to share your community.

The glorious history of your independence shines through the greatness of Washington and Lincoln. You are worthy of continuing the cult of Pericles, Timoleon, and Scipio; and permit me, to whom you have given the great honor of speaking about the ancient civilization of the land of Columbus, Amerigo, and Cabot, to recall here my fellow citizen, Carlo Botta; only a few years after your war of independence, the Piedmontese Carlo Botta was the first among Italians to relate your history, glorifying the virtues of Washington, and through your example endeavoring to stamp a seal of infamy on the tyranny then reigning in Europe, and to spur the soul of his citizens to the cult of freedom.

A GENERAL SURVEY OF THE HISTORY OF ASIA, WITH SPECIAL REFERENCE TO CHINA AND THE FAR EAST

BY HENRI CORDIER

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In attempting to draw in less than an hour a sketch of the history of Asia, I am fully aware of the difficulty as well as of the grandeur of the task which has been intrusted to me. It cannot be expected that in the short space of time allotted to the lecturer, a complete idea of this vast subject can be given. I can only sum up the main points and designate the landmarks of the unbroken chain of facts which from our days goes back to the most ancient period of the history of mankind. When we search into the remotest past of Asia, the geologist, not the historian, presents a very surprising spectacle to our view: two lands stand opposite; one, to the north, shaping a long arch round what is to-day Irkutsk; the other, to the south, constitutes a portion of the future peninsula of Hindustan; a large mediterranean sea, to which M. Suess has given the name of Tethys, separates the two continents; this ocean, in gradually drying up, has by its folds given rise to the Pamirs, the Himalayas, the high Tibetan Tableland, — and its total disappearance and the union of the two, northern and southern, lands gave birth to Asia.

If we seek into this vast continent for the territory having an authentic record of the oldest times, we find it in the lands of biblical tradition, Chaldea and Elam, where Asia tells again the story of its past with the most irrefragable evidence in the inscriptions registered on stones which, lying buried for centuries, have withstood the wear and tear of ages; thus has been revealed to us the oldest code of the world, the Law of Hammurabi, discovered at Susa by M. J. de Morgan, and described by the Dominican Father v. Scheil, both Frenchmen. However, if Elam carries us back to a period further than four thousand years before Christ, other countries of Asia, including those which are supposed to possess the most ancient civilization, are far from giving the material proof of the high antiquity to which their books and their legends lay an unfounded claim.

India cannot boast of a single monument which for age is to be compared with those of Nineveh and of Egypt, and before the eighth century B.C., no solid basis to the history of China is to be found. The perishable quality of the materials used in rearing the edifices of this last country cannot allow us to hope that the zeal of modern archæologists will unearth the secret of monuments vanished long ago.

In the actual state of science, theories only can be imagined to account for the genesis of Asiatic nations, and a common origin exists but in the fancy of a few learned men. It was very natural to look for the first migrations and the first civilizations about Elam and Chaldea, and from this authentic and venerable source let flow the great streams to the various extremities of Asia; it has been possible from isolated facts to build ingenious theories like that of Terrien de Lacouperie, but at the present time nothing definite gives us a right to broach an opinion with regard to the primitive inhabitants of Oriental Asia and their cradle.

When I was honored with an invitation to come and speak here, I believed it to be expected that I should not delay too much in treating of the ancient times of the history of Asia, and in dealing with facts which are important in themselves, but are nevertheless secondary in their results. What I am expected to give is a general view, an *ensemble.* I shall try to show the chief influences which gave life to the immense Asiatic Continent and to mark out the place it occupies in the general history of the world, making large allowance for Central Asia and the Far East, which have been the object of my special study.

During a long time Europe remained in complete ignorance of the steady though irregular movements of the populations of Asia, which was really a volcano in eruption, the terrible effects of which were felt afar. When the Roman Empire crumbling to pieces was threatened westwards by the barbarians of Germanic race, — Teutonic, Gothic, or Scandinavian, — these, pressed in their turn by the wild hordes from Asia, like a rolling wave invaded the Empire, and crushed in by the new-comers founded as far as Spain more or less flourishing kingdoms at the expense of the domain of the Cæsars. The march of the Huns from the heart of Asia is in great part the cause of these migrations of people; menacing the Chinese territory, driving away the Yue-chi, a branch of the Eastern Tartars, who, after several halts of which we shall speak further on, carved for themselves an empire on the banks of the Indus at the cost of the occupiers of the valley of this river. The invading Huns, like a huge wave, gained gradually on from horde to horde, from tribe to tribe, from people to people, till they reached Europe which, when struck by the Scourge of God, could not discern whence the blow was first dealt.

During the course of the fifth century, the Huns under Attila had not only subdued all the Tartar nations of Central Asia, but had also brought under the yoke the whole of the German tribes between the Volga and the Rhine. The defeat of the great chief by the allied armies of the Franks, the Visigoths, and the Romans at the battle of the Catalaunic Fields (451), his death two years later, stopped the tide of the Eastern invaders; as the victory of Charles Martel at Poitiers (732), three centuries later, set bounds to the throng of Arabs, who, after having torn the north of Africa from the Roman Empire, had crossed the sea, destroying the power of the Visigoths, who, after a long migratory period throughout Europe, had apparently found a permanent home in the Iberian Peninsula.

The invasion of the barbarians, who flocked together to share the spoils of the agonizing Roman Empire in the fifth century, will continue later on with the Mongol raids and till 1453, the year of the capture of Constantinople by the Turkish Osmanlis, which we may consider to mark the climax of the Asiatic encroachments.

We shall see the counterpart of these great movements when the Western nations, after doubling the Cape of Good Hope, shall resume the route of India in the course of the sixteenth century.

Buddhism, the doctrine of the disciples of Shakyamuni, has no doubt been one of the principal means of facilitating the intercourse of the nations throughout Asia; it has been the sun at which the civilization of many have lit their torch; indeed a writer could say — not without some good reason — that the history of Buddhism is in itself the history of Eastern Asia.

The spread of Buddhism and its wider diffusion from India to the remainder of Asia was greatly increased by the support received from some princes and by the peregrinations of its devotees.

After the death of Alexander the Great, whose campaign against Porus brought India into contact with the great Hellenic civilization, one of the lieutenants of the great conqueror, Seleucus, took as his share of the inheritance the eastern part of the Empire, but as early as 304 he was obliged to surrender the satrapy of India to a man of low condition called Chandragupta by the Buddhists and Sandracottos by the Greeks. Chandragupta was the founder in Magadha of a dynasty of princes; his grandson Asoka, surnamed Piyadasi (died 240 B. C.), in establishing a board of foreign missions, *Dharma Mahamatra*, gave a considerable extension to Buddhism, not only in his own dominions, but also in the surrounding countries as far as Deccan.

On the other hand, the tribes of Eastern Tartars known to the Chinese as the Yue-chi, driven by force to the west by the Hiung-nu (Huns), divided themselves into two branches; the Little Yue-chi

who settled in Tibet, and the Great Yue-chi who advanced to the banks of the Ili, and in 163 B. C. occupied, in the place of the Sakas, the country south of the Tien-shan where Yarkand and Kashgar now stand. Some years later the Yue-chi, pressed in their turn by the Wu-sun, once more drove the Sakas out of Sogdiana, beyond the Oxus, to the country watered by the Cabul River. About 35 B. C. the leader of these Yue-chi subdued Cabul, Kashmir, and Penjal. The conversion to Buddhism of one of his successors, Kanichka, the greatest chief of the Yue-chi or Indo-Scyths, gave a fresh impulse to the zeal of the followers of Shakyamuni; from 15 B. C. to 45 A. D. was held in Kashmir the great œcumenic council which finally revised the canon accepted in the north but rejected by the Church of Ceylon.

We may be asked at what time Buddhism reached China. We cannot answer with any degree of certainty. Some savants give 221 and 219 B. C. as the date of the introduction of Buddhism into China; there is nothing really authoritative to support their assertion. We may fairly suppose that the warlike expeditions against the Hiung-nu conveyed to China some knowledge of Buddhist worship. The new doctrine was introduced into China by the way of Central Asia; one thing is certain, that in the year 2 B. C. an embassy was sent by the Chinese Emperor Ngai to the Ta Yue-chi and that its chief got some oral information about the new religion. Buddhism was recognized officially in China by the Han Dynasty; the dynasty of the Later Han (24–220 A. D.) had dominated in Central Asia, and, though weakened for years, their rule had been maintained with still more force by Wu Ti, of the Western Tsin (265–290). To this period (269) belong the documents, so interesting for the administration as well as for the religion of this region, discovered during recent years by Dr. M. A. Stein, of the Indian Educational Service, at Uzun Tati, between Khotan and Niya, in the desert of Takkla Makkan, explored by Sven Hedin. Of that time also are the documents dug from the sand-buried town of Lau-lan near the Lob-nor, by Sven Hedin himself. The Hindu civilization which borders on the desert of Gobi, from Khotan to the Lob-nor, to Hami and to Turfan, vanished rapidly after Wu Ti; under the great T'ang Dynasty, during the second half of the eighth century, the Tibetans threatened the authority of the Chinese in the country of the Four Garrisons (Kucha, Khotan, Karashahr, and Kashgar), namely, Eastern Turkestan. From 791 onwards the Tibetans, masters of Turfan and the surrounding countries, had completely ousted the Chinese, whose mandarins had been recalled in 784 by the Imperial Government on account of the hopeless situation in the region.

The Chinese Buddhist pilgrims, eager to get the good word from the source itself, were drawn along the roads of High Asia to the valley of the Sacred Ganges in quest of the books giving the Key to

the Holy Doctrine; since the fourth century large bodies of pilgrims, while accomplishing their pious journey, have done at the same time considerable geographical work: Hiuen Tsang, to name the most famous among them, not only takes a place in China with the most revered personages of his church, but stands in the foremost ranks of the great Asiatic travelers, by the side of the illustrious Venetian Marco Polo. However, it was not until 1410, under the Ming Dynasty, that the Chinese obtained at last possession of the full canon of Buddhist Books which serves to millions of adherents in the Far East as a guide for their conduct.

From Central Asia, Buddhism spread to China; from China, as early as 372, it entered Korea, and thence in 552 passed on to Japan. In the mean time it had been introduced in 407 to Tibet, where after being severely persecuted, it has achieved its greatest triumphs, the King of Tibet, Srongtsan Gampo, having been converted to the new faith by his Chinese and Nepalese wives (640). With its doctrine Buddhism carried along everywhere this subtle art which had felt the influence of the ancient Greeks, brought to the banks of the Indus by the companions of Alexander the Great. From the fourth to the eleventh century, that is to say, between the beginning of the inroads of the Indo-Scyths and the Mohammedan Conquest of India, during the Buddhist Middle Ages, the Græco-Buddhist art was in a highly flourishing state and its influence spread to the Far East.

However, in paying a just tribute to this delicate and charming art which played so important a part in the artistic development of the Far East, it would be unfair not to mention that the Chinese, previously to its introduction in their empire, had a national art, not despicable in the least degree — witness this fourth century picture of Ku K'ai-che, described by Chinese historians, happily discovered and rescued at Pe-king during the events of 1900, and now kept safely in the British Museum, forever we hope.[1]

Buddhism, now one of the three state religions in China, after suffering persecutions in Japan from the hands of Nobunaga in the course of the sixteenth century, somewhat somnolent for many years, is at present in a period of magnificent renaissance in the Empire of the Rising Sun, where the labors of Bunyiu Nanjio and of Takakusu secure for it an important place. Many Japanese scholars, fascinated by the doctrines of evolution, think these are to be found in Buddhism.

Christianity spread at first in Central Asia under the form of Manicheism and of Nestorianism; only recently the *Mo-ni*, lost among the numerous religious sects mentioned by Chinese historians, have been with some degree of certainty identified with the disciples of Manichee, who played but a small part compared with that of the

[1] Cf. *Burlington Magazine*, January, 1904; *T'oung-pas*, July, 1904.

Nestorians arrived in China in the seventh century, as the celebrated inscription of 781 discovered in 1625 at Si-ngan-fu, capital of the Shen-si Province, testifies. Under the Mongol Dynasty of Chinguiz Khan, in the course of the thirteenth century, Nestorians through Tangut and Central Asia, from Khanbaliq (Pe-king) to Bagdad, held an unbroken line of archbishops and bishops; the innumerable stones which cover their graves, especially in the province of Samiriethie, bear witness to the number and importance of these Nestorians.

From the time of St. Louis and the meeting of a Council at Lyons, we trace the great progress of the Missions of the Roman Church. The Catholic world of Central and Western Europe was full of zeal for the propagation of the Gospel in Asia, where the somewhat mythical Christian prince known under the name of Prester John lived, and cherished also the hope to oppose invading Islam with a barrier of Mongol tribes. Hence the missions of the Franciscan brother John of Plano Carpini, sent in 1245 by Pope Innocent IV to the camps of Batu and of Cuyuk Khan, and of the Dominican monk William of Rubruk, dispatched by the King of France, St. Louis, in 1253, to the court of the Great Khan Mangu at Karakorum, whose journeys have been edited with so much skill and care for the Hakluyt Society by our President, the Hon. William W. Rockhill. Missionaries were dispatched to Khanbaliq (Pe-king), to the Fu-Kien province, to Central Asia, and bishoprics were created at Khanbaliq, at Zaitun, and at Ili-baliq. All these missions disappeared in the course of the fourteenth century, either destroyed in Central Asia by the influx of Mohammedanism or on account of the accession of the Ming Dynasty to the throne of China in 1368.

Missionaries returned to China only in 1579, but the evangelization in this country was in truth the work of the Jesuit Fathers and especially of the celebrated Matteo Ricci, who died at Pe-king in 1610. Christianity, which was very flourishing in the seventeenth century, soon declined, owing to the petty quarrels between religious orders, and the bull of Benedict XIV, *Ex quo singulari*, dealt to the missions a death-blow in 1742, as it proscribed the liberal doctrines advocated by the Jesuits in the worship paid by the natives to Confucius and to their ancestors.

Protestant missions in China are of a far more recent origin; they do not go back further than the beginning of the nineteenth century, when the famous Dr. Robert Morrison, author of a great Chinese Dictionary, sent by the London Missionary Society, arrived at Canton in 1807. The number of missionaries is now very great, and many of them are American. I may recall among them the names of two distinguished sinologues: Elijah Coleman Bridgman, of Connecticut, and Samuel Wells Williams, of New York, who was several times chargé d'affaires of the United States at Pe-king.

In spite of the zeal, the activity, and the devotion displayed by both Catholic and Protestant missionaries, we cannot say that their success in China has been considerable or their action deep. The Chinaman is not hostile to Christianity; he is indifferent; he finds in the moral system of his great sage, Confucius, the precepts which guide him in private and public life; he takes in the doctrines of Buddha, the practices of Taoism, the superstitions of Feng-shui, all that is necessary to him in the question of religion. Christianity is still for the Chinaman a foreign religion, the superiority of which has not been made so clear to his eyes as to induce him to adopt it as a matter of course; and though the religion of Christ met with almost unrestricted success among the pagan nations forming the old Roman Empire, or amid the wild tribes of modern Africa, Oceania, and America, it has entirely failed with the Far Eastern peoples, indifferent or atheist. If I dared say what I think, I should add that the destruction of Chinese society as it exists at present could alone secure the triumph of Christianity, and the *literati* understand this so well that they, and not the people, are hostile to its spread.

Though the number of the followers of Islam in China be far inferior to that of the Buddhists, the disciples of Mohammed have nevertheless played a considerable part in the Middle Kingdom.

The Arabs called Ta-zi were known to the Chinese, who mention them in the annals of the T'ang Dynasty (618–907), through Persia, the name of which appears for the first time in the Chinese annals (461) in connection with an embassy sent to the court of the Wei sovereigns. During the eighth century the Bagdad Abbassides and their celebrated Khalif Harun ar-Rashid joined with the Uigurs and the Chinese against the Tibetans, their common enemy. A fact interesting to note, is the presence of Ta-zi in the kingdom of Nan-Chao, a part of the actual Yun-nan Province, as early as 801.

The Arabs built at Canton a large mosque, which was burnt down in 758. In the course of the following century, in 875, the Mohammedans transferred their business from Canton to the Malay Peninsula, at Kalah, which inherited the commercial importance of Ceylon in the sixth century. Western visitors at the court of the Mongol Khans mention a number of high Mussulman dignitaries. We shall see that in the eighteenth century K'ien-lung annexed to his empire the T'ien-Shan, part of the share of Jagatai in the inheritance of his father, Chinguiz Khan. Without going into the particulars of the rebellions which devastated Central Asia, we shall recall that in 1864, a soldier of fortune, Yakub, captured Kashgar and the other towns south of the T'ien-Shan, thus creating a Mohammedan power in Northwestern China between the possessions newly acquired by the Russians after the storming of Tashkant (June 27, 1865) and

the Anglo-Indian Empire. For some time, Yakub was the undisputed and redoubtable sovereign of a real empire, with Yarkand as a capital. England dispatched to Yakub special missions with Sir Douglas Forsyth at their head in 1870 and in 1873; in 1872 the Russian staff-colonel Baron Kaulbars signed a treaty of commerce with the Mohammedan potentate. Yakub's rule was ephemeral and ended with him when he died on the 29th of May, 1877; in fact, the Chinese general Tso Tsung-tang had subdued a great part of his territory, the conquest of which he completed after the death of the Ameer.

Another outburst of the Mohammedans, caused by a quarrel between miners of different creeds and conflicting interests, took place about 1855 in Southwestern China, in the Yun-nan Province, and it led to the creation of a sultanate at Ta-li, which lasted till the capture of this stronghold by the Chinese Imperial troops on the 15th of January, 1873.

China, which is the main subject treated of in this general view, was in fact isolated only in the ancient times of her history, when her territory, watered by the Yellow River, hardly extended beyond the right bank of the Yang-tse Kiang. From the fourteenth century the land route to China was closed, and the foreigners who arrived by sea at the beginning of the sixteenth could at Canton only hold any intercourse with the Chinese, who got their scanty information about distant lands from the Canton merchants and the missionaries submerged in the enormous mass of the empire. The Cossacks who came from the north in the sixteenth and seventeenth centuries added little or rather nothing to this knowledge. It seems paradoxical, but it is nevertheless exact to say that China was opened to Western civilization and influence by the British gun. In the Middle Ages, China had the benefit of some extraneous ideas through Buddhism imported from India and through the Mongols who served as a link between Europe and Asia. China herself broke her own bounds; like the Persian and Arab merchants visiting her ports, her own traders penetrated to the farthest extremity of the Persian Gulf. At different times she held Annam in bondage; she tried to conquer Burmah and Japan, but failed; her influence was all-powerful in Korea, and she carried on her explorations to the Islands of Sunda, which soon became one of the favorite spots of her emigration.

With the Chinese Dynasty of the Ming, which replaced in 1368 the Mongol rule in the Middle Kingdom, China assumes the definite form under which she is known henceforward to the foreigner. The Manchu Conquest in 1644 brings a fresh element into the country, but the new-comers are soon absorbed; they add to the Chinese Empire the land from which they come and which constitutes to-day

the northeast region of the Empire, the actual theatre of the struggle between Russia and Japan.

With the annexation of the T'ien-Shan by the Emperor K'ien-lung in 1759 and the seizure by this prince of the temporal government of Tibet, the Chinese Empire reached the boundaries which it has retained until recent years. It is not speaking with disparagement or injustice to say that the Emperors K'ang-hi and K'ien-lung in the seventeenth and eighteenth centuries were in every respect equal or even superior to most of the contemporary princes. It is hardly possible to recognize as the heirs of these great men sovereigns like Kia-K'ing, Tao-Kwang, and specially the stupid and cruel Hien-Fung (died 1861).

With the exception of the creation of a Great Council and the superposition of Manchu dignitaries upon Chinese functionaries, the Chinese administration stands unchanged, and the moral precepts of Confucius continue to guide the conduct of all the Chinese from the lowest of the people up to the Son of Heaven. The era of inventions is closed, the fine literary productions of the T'ang period, and the great philosophical works of the Sung Dynasty do not find any equivalent during the next centuries. China did not see, and will not see anything; her glance did not extend beyond the seas, nor even beyond her Great Wall; she shut herself up, and living, so to speak, on her own stock, having at an early hour reached a high state of civilization, she stopped in her development. In some manner she became "crystallized," to use Stendhal's expression, and during this operation other nations have grown, have surpassed her, have interfered with her peaceful existence, thus awakening her in her sleep, compelling her to abandon her voluntary isolation and to accept a promiscuity which is particularly distasteful and odious to her.

The decline of China coincides with the efforts of the Western Powers to break her doors open. Until the middle of the nineteenth century, with the exception of a few Catholic missionaries retained as savants at the court of Pe-king or hidden in the provinces, where they led a precarious existence, foreigners were lodged in a quarter of the single port of Canton without the right of moving freely about the city; moreover, they could only stay at the place the time strictly necessary to the settlement of their affairs, that is to say, during a pretty short portion of the year; afterwards they had to return to the Portuguese Colony of Macao, where lived their families, who were not allowed to accompany the cargoes to the Chinese port. Business was not conducted freely with the natives, but through the medium of privileged merchants, called *hong* merchants, whose monopoly was finally abolished by the fifth article of the treaty signed at Nanking by England August 29, 1842. Wanton vexations were in-

flicted upon foreigners; it was forbidden to the natives to teach their language to any "Western Devil" (Yang-kwei-tse); the *lex talionis*, man for man, was applied with all its cruelty and injustice.

This state of things lasted till the Opium War, which gave England the means of opening China more widely to the foreign trade and of making the way for the introduction of Western ideas, without abating, however, the arrogant pretensions of the mandarins.

In the course of the sixteenth century began the double march toward China, by the north and the south, by land and by sea, which brought into contact the nations of the Occident and those of the Far East. Ermak's Cossacks were the pioneers of the northern route, Vasco da Gama's sailors and Albuquerque's soldiers were the pilots and the conquerors of the southern route.

To the Portuguese we owe the discovery, or more exactly the reopening, of the road of Asia in modern times. The cape discovered by Bartholomew Diaz in 1485, doubled by Vasco da Gama in 1497, was the great port of call from Europe to Asia, until the ancient way of Egypt was resumed during the nineteenth century. Masters of the Indian Ocean, the capture of Malacca in 1511, their first voyage to Canton in 1514, a wreck in 1542 at Tanegashima, in the Japanese Archipelago, gave to the Portuguese the possession of an immense empire and the control of an enormous trade which they were not able to keep. The annexation of Portugal to Spain, "The Sixty Years' Captivity," under Philip the Second, was as harmful to the first, drawn by its conqueror into a struggle fatal for her prosperity, as was to the Dutch colonies the absorption of Holland by Napoleon I.

The Spaniards settled in the Philippine Islands; the Dutch, with the enterprising Cornelius Houtman, landed in 1596 at Bantam, created the short-lived colony of Formosa, and a lasting empire in the Sunda Islands, where in 1619 they laid the foundations of the town of Batavia, on the ruins of the old native port of Jacatra.

However, one may say that England really opened Eastern Asia to foreign influence, at least by sea, from the day in 1634 when the gun of Captain Weddell thundered for the first time in the Canton River. It was with the accompaniment of British powder that during two centuries the countries of the Far East carried on trade with the Western merchants. It was on sea, and of course by the south, that England fought for the supremacy in Asia.

A terrible struggle in India against the French, where Clive and Hastings got the benefit of the labors and exertions of François Martin, Dumas, Dupleix, and others, three wars against the Mahrats, the conquest of the Punjab, the crushing of the great rebellion of 1858, the suppression of the Empire of the Great Mogul, have secured to

Great Britain the possession of the Indies, threatened only as of yore by the northwestern invaders. Three lucky campaigns have given Burmah to England, already master of the greater part of the Malay Peninsula.

The treaty signed by Great Britain at Nanking in August, 1842, broke up the Chinese barrier; the various Powers followed in emulation the example of England; the United States, France, Belgium, Sweden and Norway, by turn signed treaties or conventions with the Son of Heaven. At that time England was truly without a rival in the Far East, but was not far-sighted enough; the pledge she took at Hong Kong, important as it was, was but a small one with regard to the hopes of the future. England gave back to the Chinese the Chusan Islands, which had been in her hands, as the French returned the Pescadores after the settlement of the Tonquin question; of course, loyal and honest acts, but also acts of improvident politics.

To-day England has lost the unique situation she held sixty years ago. In all the peoples of the world, she has found eager competitors anxious to share with her the prey of which for a long time she was alone covetous, alone capable of making the necessary effort to grasp it firmly.

France, which had formerly but a moral interest in the Far East, that of the Catholic missions, has now a solid ground of action, as a consequence of the conquest she made of the oriental part of Indo-China, while England subdued the western coast of this peninsula.

The colonization or the conquest by European nations tends to diminish, to restrict, and especially to modify in Indo-China the effect of the pacific or military invasions of Hindus and of the Sons of Han. The struggle in Indo-China is limited to-day to two champions; the Chinese and the foreigner, wherever he comes from — England, France, or even Japan. The native, capable of slight or passive resistance only, will have in the scale but the weight of his master, who may not be of his own choice.

However, the two facts dominating the political history of the Far East during the last fifty years are the spread of the Russian power through Asia on the one hand, and the revolution and the transformation of the Japanese Empire on the other.

During the reign of Ivan IV, in the middle of the sixteenth century, to the east of the Ural Mountains began this tremendous march of the Russians which drove them beyond the sea, since the authority of the Tsar was formerly extended to this side of the Straits of Behring; indeed, it was but in 1867 that the Russian possessions in America, Alaska, were acquired by the United States. The unification of the states of Great Russia, the conquest of the Tartar Kingdoms of Kazan (1552) and of Astrakhan (1554), removed

the boundaries of Russia to the east; the Russian advance to the Baltic had been stopped by the victories of Stephen Bathory; the East only was left open to their enterprise.

In 1558 a certain Gregori Strogonov obtained from the Tsar the cession of the wild lands on the Kama River. With some companions he settled in that region, created colonies, and some of the hardy fellows went as far as the Ural Mountains. An adventurous Cossack of the Don, Ermak Timofeevitch, whose services had been secured by Strogonov, crossed the Ural Mountains at the head of eight hundred and fifty plucky men, and advanced as far as the Irtysh and Ob rivers, on the way subduing the Tartar princes. Ermak was the real conqueror of Western Siberia, but if he had the luck and the glory of adding a new kingdom to the states of the prince who has been surnamed the Terrible, to his immediate successors was due the foundation of the first town in the territory snatched from the Tartars, for Ermak was drowned in the Irtysh in 1584, and Tobolsk dates only from 1587. The effort of the Russians was then directed to the north of Siberia; they did not meet with any resistance until they reached the Lena River; in 1632 they built the fort of Yakutsk on the banks of this river, and pushed their explorations on to the sea of Okhotsk. In 1636 tidings of the Amoor River were for the first time heard from Cossacks of Tomsk, who had made raids to the south.

Vasili Poyarkov (1643–46) is the first Russian who navigated the Amoor from its junction with the Zeia to its mouth. In 1643–51, Khabarov led an expedition in the course of which he built on the banks of the river several forts, Albasine among them. In 1654, Stepanov for the first time ascended the Sungari, where he met the Chinese, who compelled him to trace his way back to the Amoor. In spite of all their exertions, after two sieges of Albasine by the Chinese, the Russians were obliged on the 27th of August, 1689, to sign at Nerchinsk a treaty by which they were driven out of the basin of the Amoor.

The Russians, bound to carry their efforts to the north, subdued Kamchatka. What is perhaps most remarkable in the history of the relations of the two great Asiatic empires is the tenacity of the Muscovite grappling with the cunning of the Chinese, and the comparison between the starting-point of these relations, the Russia of Michael and Alexis and the China of K'ang-hi, and their culminating-point in 1860, when these very nations shall have passed, one through the iron hands of Peter the Great and become the Russia of Alexander II, and the other under the backward government of Kia-K'ing and Tao-kwang and become the China of their feeble successor Hien-Fung. Only on the 18th of May, 1854, did the Governor-General Muraviev navigate again the waters of the Amoor River; on the 16th of May, 1858, he signed at Aigun a treaty which made the

Amoor until its junction with the Usuri the boundary between the Russian and Chinese Empires, the territory between the Usuri and the sea remaining in the joint possession of the two Powers, but after the Pe-king Convention (2–14 November, 1860) this land was abandoned to Russia and the Usuri became the boundary. In the mean time, the treaty signed at T'ien-tsin by Admiral Euthymus Putiatin (1–13 June, 1858) secured for Russia all the advantages gained by France and England after the occupation of Canton and the capture of the Taku forts.

The second Russian move had Central Asia as its aim; it was the result of the foundation of the town of Orenburg, the exploration of the Syr-Daria by Batiakov, the building of Kazalinsk (1848) near the mouth of this river; the unsuccessful effort of General Perovsky (1839) turned the enterprise of the Russians to the Khanate of Khokand; the storming of Tashkend by Colonel Chernaiev on the 27th of June, 1865, was the crowning point of the conquest of Turkestan by the Russians. The road to the T'ien-Shan had already been opened to the Russians by the treaty signed at Kulja (July 25–August 8, 1851) by Colonel Kovalevsky, which, however, was known only ten years later (28 February–11 March, 1861).

While Yakub Bey had founded, as already seen, a Mohammedan Empire in the T'ien-Shan Nan Lu, the Russians took possession of the Ili Territory on the 4th of July, 1871. The retrocession of this territory to China after the death of the Attalik Ghazi was the cause of long and difficult negotiations between Russia and China, which ended with the treaties of Livadia (October, 1879) and of St. Petersburg (February 12–24, 1881). Russia restored the lands which she detained illegitimately, keeping, however, a small portion, not the least valuable of the lot.

The third Russian move was aimed at the countries beyond the Caspian Sea, and was the result of the conquest of the Crimea by Potemkin in the name of the great Catherine, and of the treaty of Kutschuk Quainardji (1774), which gave to the Russians the free navigation of the Black Sea. Under the reign of Nicholas I, Putiatin established a permanent maritime station on the Island of Akurade in the Gulf of Astrabad, and a line of ships on the Caspian Sea, securing from the Persian Government facilities for Russian fishermen and traders on the southern coast of that sea.

At last, in 1869, Russia took a definite position on the eastern coast of the Caspian Sea in settling at Krasnovodsk. Later on the break-up of the Turkish barrier of Geok-tepe by Skobelev, the occupation of the Oasis of Merv by Alikhanov, the capture of Samarkand, made of the Transcaspian country a Russian possession, rendered Russian influence paramount in the north of Persia, and threatened Herat and the route of India. The railway which the ingenuity and tenacity of

Annenkov threw across the burning desert, united the Caspian Sea to Bokhara and Samarkand, crossing the Oxus at Charjui. The continuation of this railway from Samarkand to Tashkend and the Siberian line was to place the whole of Asia beyond the Ural Mountains and the Caspian Sea in the hands of the Russians.

It seems as if nothing could put a stop to this expansion; on the contrary, the bold and rapid construction of a railway across the frozen steppes of Siberia was to unite Russia directly with the Far East by an unbroken chain; the ports of Manchuria and Korea, watered by the seas of China and Japan, being considered the termini of the long line.

Work on the western part of the Siberian Railway began on July 7, 1892. Its extension beyond the Baikal Lake was to take it on the one hand to Vladivostock at the eastern extremity of the Russian possessions in Asia, and on the other to Port Arthur in the south of the Liao-tung Peninsula. It was fair to think that the point where the two lines met, in the very heart of Manchuria, should become a most important centre of industry and population; indeed, this has been realized, and in a few years, in the place of a barren spot, the considerable town of Kharbin (Harbin) has been built in the twinkling of an eye, so to speak.

Russia weighs with its enormous mass on the Asiatic Continent like a gigantic polyp, whose head and body press on Siberia and Central Asia, with tentacles stretching toward Korea, Manchuria, Mongolia, Tibet, Afghanistan, Persia, Asia Minor, ready to close them on the prey which she encircles, and which is disputed to her by other nations anxious to take their share of the plunder, thus creating a permanent state of uneasiness throughout the Continent.

While Russia was making this enormous extension in the northwest of Asia, Japan was pursuing the series of reforms which were to secure for her a very special position in the concert of the nations of the world. Previous to the revolution of 1868, which altered entirely the state of things in Japan, a real duality in the government existed in this country; while the Tenno, or Mikado, the only Emperor, reigned nominally at Kioto, the power was held in fact by the Shogun, a sort of Mayor of the Palace, residing at Yedo. From Iyeyas, at the beginning of the seventeenth century, who gave to feodality the definitive constitution which lasted to our days, the power remained in his house, that of Tokugawa. The foreigners who landed in Japan in the sixteenth and the beginning of the seventeenth century — Portuguese and English — were expelled in 1637, and by the end of 1639 the Dutch and the Chinese were the only outsiders allowed to live on the islet of Deshima, in the Bay of Nagasaki, in order to supply the Japanese with the goods they required.

This state of things, notwithstanding the attempts vainly made by Great Britain and Russia during the first years of the nineteenth century, was to last until the arrival of the American Commodore Matthew Calbraith Perry, who in July, 1853, anchored at Uraga at the entrance of the Bay of Yedo, and who signed on March 31, 1854, at Kanagawa, the first treaty concluded between Japan and a foreign power.

Was the revolution of 1868 for Japan but one of the numerous crises which troubled its already long and not too serene existence? Was it a mere accident for that country, progressing by jumps and bounds and not by evolution? or was it the starting-point of a civilization copied from that of Europe? Has she covered only the old culture of Yamato with a superficial varnish? Has she completely destroyed it to replace it by a new one? I greatly doubt it, or rather I do not believe it, as it cannot be that in some fifty years a radical transformation can reach the deeper layers of the population. The Japanese obey two motives in their warlike undertakings; one is dictated by a tradition of war, by an unsurpassed bravery of which they have given undeniable proofs for centuries; the other by reasons of a purely economic order. Japan is at heart a warlike nation; in every man of Nippon, the soul of a *samurai* is asleep. No, a people cannot be modified in a few years.

Japan has behind her a past of struggles, heroism, and art, with very little original literature. Endowed with the genius of application more than with that of invention, with no great commercial aptitude, a hero or a pirate according to circumstances, full of *imprévu*, as his tradition borrowed from strangers does not trace to him a firm line of conduct, the Japanese lives on reminiscences and is, above all, an imitator; he is not gifted with imagination; an artist and a warrior, he is not a philosopher. Does he give us now more than the appearance of a Western civilization? I hope so for the sake of Japan herself, as, if it were otherwise, we should have but a fragile edifice erected by a superficial as well as a versatile people. What an interesting and curious sight it offers to the gaze of the observer!

In the midst of the peoples which from the West and the East rush to the assault of the Middle Kingdom, Japan stands as a young and vigorous power which, in 1868, by a revolution without a parallel in the history of mankind, transformed herself from a nation most hostile to foreign intrusion to one of the most progressive of the globe. We may seek in great part the solution of the Asiatic problem in the future of Japan, which acts a part in no way inferior to that of the Westerners, and which finds itself to be the stumbling-block to the ambitious designs of the foreign powers. Will Japan be at the head of the invaders come from near and far, as at Peking in 1900? Will she be, on the contrary, having galvanized the

old man, the champion of the Asiatic World to repel the common enemy?

It is fair to believe, in reviewing the history of the past and in studying the various aspects of present politics, that Japan would prefer the second of these parts, more in accordance with her traditions and her aspirations.

It is evident that two nations in full progress, operating in the same field of action, would fatally meet some day. If Russia needs a port free from ice in the Eastern Sea, Japan has a no less imperious necessity of finding room for its population in excess. From five thousand four hundred and forty-three in 1880, the number of the Japanese living out of their country increased in 1902 to one hundred and thirty-nine thousand five hundred fifty-three, scattered chiefly between Korea, Canada, the United States, the Hawaiian Islands, etc.

The Treaty of Shimonoseki (April 27, 1895), signed after a glorious war with China, had given to Japan the southern portion of Manchuria, including Port Arthur. The triumph of the Emperor of the Rising Sun made of an Asiatic potentate like the Mikado a sovereign whose voice was heard in the whole of the world; from a local power, Japan took rank among the great powers of the globe. In the conquest of Manchuria, Germany, France, and Russia perceived a danger to European influence in the Far East, and by a convention on November 8, 1895, obtained the retrocession of Liao-tung by Japan to China. It was no doubt a severe wound to the *amour propre* of the victor.

In the mean time Russia continued to increase her means of action and to strengthen her position in the Far East by the creation at the end of 1895 of the Russo-Chinese Bank, by conventions regarding the Manchurian Railway, and by the signature in 1896 at St. Petersburg by the Viceroy Li Hung-chang of a treaty still secret.

After the massacre of two of her missionaries, Germany having taken possession of Kiao-chow on November 14, 1897, Russia shortly after obtained the cession by lease of Port Arthur (December, 1897). England, in gaining a settlement at Wei-Hai-Wei and France at Kwang-chow-Wan, seemed to begin the partition of the Chinese Empire. At one moment the old Manchu world seemed to awaken to the danger; at one moment the Emperor Kwang-siu had no doubt the real instinct of the situation. He had shown dignity and bravery when he refused to fly to the west, as was suggested to him by his timorous ministers at the time the Japanese threatened his capital in 1895.

The demands of the foreigners who appeared to seek the dismemberment of the Empire and threatened to make a new Poland of

China, frightened the Manchu monarch, who felt strongly — in so far as his weakened health and a superior will allowed — the wish to transform his country. It was but a flash of lightning in a darkened horizon. In order to succeed, it would have been necessary for Kwang-siu to have at his command, with his handful of bold but busy-body reformers, a solid army, capable of preventing a reaction. But this army was lacking to the Chinese Emperor, who made the generous but abortive attempt to introduce reforms in which he lost at once the power and the appearance of energy which he had for a brief period displayed.

On June 10, 1898, Kwang-siu began the series of reforms, the ephemeral course of which was stopped on September 30 of the same year by the Empress Dowager, the reactionary party, with her, retaking the power. What followed, the rebellion of the Boxers; the siege of the foreign Legations at Pe-king, in 1900, is fresh in the memory of all. It is but just to note, as the Japanese Prime Minister, Count Katsura, remarked quite recently, that during all these events Japan has filled her duty as a civilized nation by the side of the Western Powers.

The causes of the present gigantic struggle appear forcibly to every one's eyes, but to say the least, the place to discuss them is not in a scientific congress; however, it is not forbidden to foresee some of its results and the effects these may have on the general politics of the universe. If Japan is in our days the only nation capable of waging a war for the sake of heroism, a rare virtue in our matter-of-fact societies, it is nevertheless true that in the present struggle economic interests were the main motives; as we have said already, Japan has neither the room nor the food with which to supply the surplus of her population; she is compelled to look beyond her own boundaries for the necessaries of common life. Internal motives also dictate partly her conduct.

The extension of nations is in nearly every case directed according to natural though at times cruel laws; often these are in contradiction to the laws of civilization; so we see, in spite of treaties, in spite of associations for peace, in spite of leagues for promoting fraternity between nations, in spite of arbitration committees or tribunals, war breaks out suddenly, irresistibly, when vital economic interests are at stake. Nations go back to the state of primitive man, and the right of the stronger becomes the rule.

It must not be forgotten that if Japan needs an extension of territory for her excess population, she has the need scarcely less important of keeping up her communication with the various nations among which she desires to hold her rank. The construction of the Siberian Railway, in shortening the time of the journey from Europe to Asia, has also practically shortened the distances. Until the

problematic project of building a railway to unite the Mediterranean Sea to the Far East by the way of Persia and India shall be carried out, and whatever be the result of the present war, Russia will hold the highway of intercommunication between Europe and Asia; less than any other nation can Japan afford to give up the use of this route, and being thus dependent upon the Russians cannot keep in a state of perpetual hostility with them.

During a long time, we had in Europe the bad habit of studying separately the various political problems and of seeing only particular cases in what were really but the secondary effects from general causes. Nowadays, there is not a single problem of foreign politics which can be treated with indifference. Whatever be the part of the globe where the gun thunders, the repercussion of it is felt in the capitals of the whole world; special questions become questions of general interest, and the effort of diplomacy to avoid a universal conflagration tends to circumscribe the struggle between those chiefly concerned; the task is rendered the more arduous in that the multiple treaties or alliances between nations extend the limits of the debates and thus increase the chances of a general conflict.

Europe used to consider Asia, except in her western part, as a domain where events rolled on without any distant effect and having therefore but an interest of mere curiosity. China, Bossuet could pass over in silence, that is to say the third of the total population of the globe, in his *Discours sur l'Histoire Universelle*, a very poor work by the bye, admired only by those who have not read it. However, during the course of the fifth century the invasion of the barbarians, and in the thirteenth the raids of the Mongols, should have opened the eyes of the most blind of observers. And these considerable events were not the result of fortuitous causes, but the natural consequence of important events which had happened in the interior of Asia, while our ancestors had not the faintest suspicion of them.

Moreover, the great navigators of the sixteenth century unraveled the mystery which shrouded the remote countries and helped to make clear the interest Europe had in knowing them better, and let us say, with frank cynicism, in speculating upon them.

The first attempts to create factories, then the conquests at the end of the seventeenth and during the eighteenth centuries, showed that Europe had abandoned her majestic indifference, and was feeling the necessity of a policy which reached beyond the horizon bounded by her small and greedy continent.

At the close of the wars of the First Empire, as soon as peace is signed, we see the Western nations resume the routes to Asia, for a short period neglected. England in India and China, the Dutch in the Spice Islands, France in Indo-China, later on the Russians

in Central Asia, then in the basin of the Amoor River, all rush to the conquest of new territories; appetites are sharpened, rivalries created; means of more rapid locomotion shorten distances; a new nation, Japan, is born to civilization, or to what it pleases us to call civilization; and Central and Eastern Asia, being no more isolated, are dragged into the inharmonious concert of universal politics.

The Chinese problem, simple in 1842, when England signed the treaty of Nanking, became more complicated from year to year by the introduction of fresh and powerful interests, following in this the ordinary laws of politics. The arrival of the Russians by the north, the transformation of Japan to a modernized empire, the occupation of Indo-China by France and England, the taking possession of two Oceanic archipelagoes by the United States, the newly born colonial ambitions of Germany, new means of transport with a rapidity which could not be foreseen half a century ago, at last the magnificent prey at stake, made the problem, so simple at first, one of increasing complexity.

The Chinese question, which is but one of the aspects of the foreign politics of some nations, such as France, the United States, and even England, is vital for Japan, to a lesser degree for Russia, which by a check will only be delayed in her designs for a more or less protracted period. Political problems are interwoven one with another; Far Eastern problems are connected with Oceanic problems, and among the Powers who are to play a part in the Pacific, we must reckon the young and active British Colony, the Commonwealth of Australia, which is beginning its international life and will one day be called upon for some considerable deeds. In this rapid survey I can make but a passing allusion to the certain effect which the accomplishment of the great work of cutting a canal across the Isthmus of Panama will bring into the relations of the whole world.

In fifty years the alterations in the ways of intercommunication have completely changed not only the politics of Asia but also of the rest of the world. China, which, in 1842, had to stand but against Great Britain, in 1858 had to reckon, besides this Power, with France, the United States, and Russia. The most audacious people might hesitate to undertake remote expeditions involving a journey of several months by the Cape Route; the way of Siberia, taken again by the Russians led by Muraviev (1856), was long and difficult; the opening of the Suez Canal (1869), coinciding with improvements to the steam-engine, permitted the establishment of more direct and frequent relations between the peoples of the West and those of the Far East; finally the completion of the Siberian Railway during recent years, placing Pe-king within three weeks from Paris and London, could not longer allow any European country

to remain indifferent to the fate of Eastern Asia. We see just the reverse of what happened in the course of the fifth and thirteenth centuries when we witnessed the movement, the delayed ebb tide of a wave rolled from the depths of Asia, which will resume its old course in the near future if we may believe in the predictions of ominous prophets.

The laws which regulate the existence of peoples are similar to those which govern the lives of individuals. Man is born, lives, dies; nations have their periods of growth, climax, transformation, decline, and disappearance; this disappearance is not nothingness, which is meaningless; it is no more total in a nation than in the individual, as, according to Lavoisier's celebrated formula, "In nature nothing is created, nothing is lost"; the scattered elements go toward the constitution of new nationalities.

The adult age of a nation, that is to say the highest pitch it has reached, is the period when it has completed its complete unity for which it struggled during the time of its growth. This period of highest prosperity can last a shorter or longer lapse of time, but all bodies which carry in themselves the germs of their development contain also the elements of their decay, which appear sooner or later according to circumstances.

China has known brilliant periods in her history, such as that of the T'ang Dynasty from the seventh to the ninth centuries, a time which the Chinese people still remember gratefully; such as that of the Mongol supremacy in the thirteenth century, when the power of the Great Khans extended from the Chinese Sea to the right banks of the Volga.

China has even known a period of splendor under the first sovereigns of the present Manchu Dynasty, the great emperors, K'ang-hi and K'ien-lung; from the River of the Black Dragon to Indo-China, from the Oriental Sea to the Celestial Mountains and the mysterious capital of the Dalai-lama, the name of the Son of Heaven was feared and respected; then shone upon the Flowery Kingdom an incomparable *éclat* ignored by the contemporary Westerners, similar in this respect to the Chinese of to-day who do not know the real force of occidental nations.

Immobility, as is the case with China, when all the others are progressing, is not stability; it is retrogression; rivals and competitors are advancing without any rest. Woe to-day on the people who in the scramble of nations tries to stop; it is drawn forcibly along, uprooted like the proud tree carried in its mad race by the tumultuous flood.

Has the decline of China, which began with the nineteenth century, and had increased from reign to reign, reached now the last period of the crisis? I believe it; but we are witnessing an evolution, not

a disappearance. In fact, only the system of government and those who administer it are worn out and corrupt and have served their purpose. The Chinaman has always preserved his sterling qualities: honesty, sobriety, inclination to work, love of his family, attachment to his home, which are his characteristic traits, have given him vitality, increased his longevity, and constituted his real strength. The Chinese absorb their conqueror, who disappears in the strong individuality of the vanquished, as a stream, less powerful in appearance, often captures the neighboring watercourse, more important but ill-protected against an enemy of whose existence it is unaware. The warlike Mongol of the Middle Ages has become a peaceful shepherd of flocks, and the fierce Manchu invader of the seventeenth century is now but one of the innumerable functionaries who crowd the administrative hierarchy of the Celestial Empire. The evolution of China has hardly commenced as yet; a few isolated reformers can have no real influence upon so vast an empire. Railroads will be *the* conqueror of China; the steam-engine will carry through the whole empire ideas — not French, English, German, nay, nor Japanese — but new general ideas which will give to the Chinese a characteristic individuality.

After innovations will this great body remain homogenous?

Homogeneity exists in China by virtue of the centralization of the administration and the common origin of the mandarins, but the points of view of the country and the customs of the races which inhabit it are exceedingly varied; its different parts are merely placed in juxtaposition; they are not blended into one uniform mass; they are only united by the artificial tie of government. Strip the Chinese of the queue which adorns the back of his head and suppress the shaving of his skull, made compulsory by the victorious Tartar, and one will see the most varied peoples throughout the Empire. The Chinese of Canton and the Chinese of Pe-king vary almost more one from the other than the English and the French; the Lolo of Se-tch'uan is as unlike the Chinaman as a Volga Kalmuk is unlike a Baltic German; the rough mountains of Yun-nan have nothing of the pleasing appearance of the hills of Che-Kiang; the plain of China, practically the valley of the Imperial Canal, does not recall in any manner the uneven country of the Upper Yang-tse.

What will this evolution be, rendered compulsory by the fall of an obsolete and rotten administration, hastened by the construction of railways, and an obligatory contact with peoples differing in their civilization, in their appearance, in their aspirations? No one can say.

There is no place in China for the immigration of foreigners who would not certainly seek their livelihood in the sterile parts of the Empire devastated by famine; but privileged or rather favored by

chance, merchants, engineers, soldiers will be able to subsist as in the past. Will they exercise some of the influence hitherto refused to the foreign element? I think so, thanks to the economic revolution worked by railways, which cannot fail to be followed by a social revolution. However democratic the system of Chinese administration may be, — an administration all the degrees of which are accessible to the most deserving or the most intriguing, — the Chinese dignitaries are nevertheless a backward caste which prevent all progress. But if this state of things has lasted in China during centuries, if the narrow and abusive interpretation of the precepts of Confucius has postponed the introduction of reforms, it is only because the means of intercommunication were too slow and too rare between the various parts of this immense Empire. That great events could take place in certain regions without other provinces having the least knowledge of them; that the very existence of the Empire could have been threatened as it was in 1858 and 1860, without the bulk of the nation having the least inkling of the danger, will surprise only those who are ignorant of China. Things will be changed when a net of rapid highroads shall cross the eighteen provinces, and bring them into direct relation with the countries where the outer barbarians have settled. The management of affairs will fall into the hands of those who, more clear-sighted than their elders, shall have foreseen the new state of things; the Star of Confucius will vanish in the steam of the locomotive, and fade in the light of the electric spark.

Whether China will remain a territorial unit, which I do not believe, the economic interests of the north and the south, of the east and of the west being too divergent; whether she will keep her autonomy, or be dismembered, or held in bondage by foreign chiefs — the prolific Chinese race will ever remain one of the most important factors in the great struggle for life of races and nations, a struggle for which she is assuredly better prepared than many of those who consider her an easy prey, which they may possibly devour, but certainly will not digest.

It is not without some intent that till now I have hardly spoken of the United States, whose guest I am to-day; last but not least.

The initiative of the trade of the United States with the Far East is not due, as one might be tempted to believe, to the merchants of the western coast, but to the enterprising and spirited merchants of New England, Boston, New York, Baltimore, whose wooden ships doubled Cape Horn to go to Canton. Eight years after the Declaration of Independence, on Sunday, February 22, 1784, for the first time an American ship, *The Empress of China*, set sail at New York for China; since then an unbroken line of vessels flying

the star-spangled banner has crossed the Pacific Ocean and established a communication between Young America and Old Asia; but the starting-point has been changed, and it is now from the coast of California that the swift steamers which connect the two shores are sent.

I remember the time, not yet far off, when the American trade almost equaled that of England, and when at Canton and Shang-hai the "Merchant Princes" of Boston and New York did not yield either in their wealth or their influence to those of London and Liverpool. Looking backward, I cannot but think with gratefulness and not without some melancholy of the happy hours I have spent in the house of Messrs. Russell & Co., whose head, Edward Cunningham of Boston, was the most popular, the most esteemed, and the most justly influential citizen of Shang-hai.

The civilizing mission which the United States have taken upon themselves has been extended beyond the already large frontiers of their dominion; the occupation of the Hawaiian and Philippine Islands has created new desires in a commercial and industrial nation, turned it into a political power which, in the future destinies of this new Mediterranean called the Pacific Ocean, has the right to claim its share of legitimate influence.

May I be permitted at the end of this lecture to express my gratitude to those who did me the honor and gave me the pleasure of an invitation to come among you, and to crave the indulgence of my hearers, ill as I have performed my task.

Citizen of the great Sister Republic, I do not forget that being born on the banks of the mighty Mississippi, at New Orleans, the first years of my life were spent under the shelter of the star-spangled banner of the Union; I feel happy to speak before fellow countrymen, regretting the absence of the world-renowned traveler and scholar, my friend, the Hon. William Woodville Rockhill.

SUPPLEMENTARY PAPER

A short paper was read before this Section by Professor W. S. Ferguson, of the University of California, on "Plutarch as a Comparative Biographer." The line of argument chosen by the speaker was first to demonstrate that one of the principles on which Plutarch chose the material for his Lives was the similarity in character and career to be established between the Greek and the Roman hero; and second, to exhibit in the case of one book (the 10th), dealing with Pericles and Fabius Maximus, the historical perversions which this principle occasioned.

SECTION C — MEDIEVAL HISTORY

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(*Hall* 6, *September* 21, 3 *p. m.*)

CHAIRMAN: PROFESSOR CHARLES H. HASKINS, Harvard University.
SPEAKERS: PROFESSOR KARL GOTTHART LAMPRECHT, University of Leipzig.
PROFESSOR GEORGE BURTON ADAMS, Yale University.
SECRETARY: PROFESSOR EARLE W. DOW, University of Michigan.

HISTORICAL DEVELOPMENT AND PRESENT CHARACTER OF THE SCIENCE OF HISTORY

BY PROFESSOR KARL GOTTHART LAMPRECHT

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HISTORY is primarily a socio-psychological science. In the conflict between the old and the new tendencies in historical investigation, the main question has to do with social-psychic, as compared and contrasted with individual-psychic factors; or, to speak somewhat generally, the understanding on the one hand of conditions, on the other of heroes, as the motive powers in the course of history. Hence, the new progressive, and therefore aggressive point of view in this struggle is the socio-psychological, and for that reason it may be termed modern. The individual point of view is, on the other hand, the older, one that is based on the championship of a long-contested but now, by means of countless historical works, a well-established position.

What is, then, the cause of these differences? Personal preference, or the special endowments of individual investigators? The reaction of feeling against the former exaggerations of the one or the other principle? Assimilation to other trends of thought, philosophic or scientific, of the science of history? Nothing of the kind. Rather, we are at the turn of the stream, the parting of the ways in historical science.

In order to understand better the process that is going on, let us consider the following contrasts.

Take first a period in which all men, within a relatively small community, such as we see in the beginnings of a nation, are absolutely of the same psychic equality, so much so that they in action and feeling can be said to stand side by side as examples of the same endowments. Then take another age in which, within a given community of much greater extent, each individual differs in kind from all others, so that — even more than is at present the case — his volitions and sensations differ radically from those of his fellow men.

It is clear, then, that we have here the two poles of human activity, whose influences must give different results in any study of the currents of life that we call historical psychic existence, the life embraced within the limits of these poles. In the first case the treatment would yield only a delineation of the life of units; for the treatment of the collective psychic existence would produce as a result only a sum of the already known, — the psychic existence of the individual. In the second case we should indeed take a glance first at the psychic life of the unit, from which it would be seen that it by no means included the character of the life of the many, but rather that the collective psychic life fertilized by the marked deviations of the individual within itself is quite a thing in itself, with its peculiar psychic or socio-psychic character; and that to this spiritual life of the whole, the psychic activity of the individual is in such a manner subordinate as to be dominated by it for the best and highest ends.

One sees, therefore, that the first case of the coexistence of persons psychically quite identical would result in a purely individual psychology; the second case of coexistence of absolutely differentiated persons would result in a radically socio-psychological historical method of treatment.

But the instances just given never occur in perfection. However, the connections formed among them constitute principles in the course of history and historical science; the pole of similarly organized persons appears in the beginning of cultural development as the principle of lower culture, while the pole of dissimilar units reveals itself as underlying higher cultures, for the simple reason that the trend of evolution is toward progressive differentiation and intergradation of the human soul.

If on the results of the examples cited and deduced in a purely psychological manner are based the main principles of every development of historical treatment from the lowest to the highest, one finds corresponding to them, in the various civilizations of the world, the same course of history, descriptive or scientific. It begins

always with the individual-psychological investigation of the past, and arrives finally at a markedly social-psychological point of view. In a word, it is the course of events which begins with the heroic poem and ends with the history of civilization. If we paint the panorama of this historiographic development rather more vividly and minutely, it will be seen that the individuals of the lower stages of civilization have as little consciousness of the conditions that are characteristic of them, as of the difference between these conditions and those of other stages of civilization. The English, French, Italian, and, in particular, the German poet of the golden age of medievalism who worked over the materials of classic antiquity, transferred them unconsciously to the conditions of his own age. Æneas became a knight, and Dido a fair *châtelaine*. It was only the beginning of modern times, the closing centuries of dying medievalism, that brought the dawn of a comprehension of the differences of various cultural conditions, and therefore in our opinion a quickened sense of the historical difference of the periods of civilization in general. Similar observations might be made in the history of ancient peoples and in the cultural phases of Eastern Asia. Everywhere the beginnings of socio-psychological historical comprehension are coincident with the emancipation of individuality from medieval restraint, in order to enter on the so-called new age with the more rapid process of its own differentiation.

But before this stage is reached, centuries have elapsed, and centuries in which history was understood only in the individual-psychologic sense, merely as the product of single distinguished individuals. And correspondingly the forms of historical tradition are purely individual. Almost everywhere there appear two forms which may be taken as typical, — genealogy and the heroic poem.

A characteristic beginning! Whence arises its dual nature? In both instances we are concerned with the memory of single persons, particularly of ancestors. But in the one case the barren record is taken from the purely prosaic reality of a natural pedigree, in the other the single individual is selected and his deeds immortalized in poetic form with an exaggerated objectivity. How does this difference arise? We are here face to face with a radical division in the historical point of view, one which occurs in all ages in higher as in lower stages of culture. It can be characterized as the difference between naturalism and idealism. In the first instance reality is followed closely, held fast, copied. To this belong the rapid offhand sketches, the journalism of to-day in so far as it serves as the annalistic medium of news; and, finally, statistics. In the other case there intervenes between the simultaneous photographic and phonographic impression of occurrences and their collective reproduction, time, and with time, memory. Memory, with its thousand strange

associations, abbreviating, rounding off, and admitting of outer influences and inner prejudices; in a word, memory is the artist that individualizes and remodels its subject. For what else is idealism but the retrospective treatment of a theme into which the personal note enters, — indeed with intention, — whereby the floodgates are opened to the whole intellectual current of personality proper? Hence in higher states of culture, in the case of differentiated individuals, the personal style arises, and with it the personal work of art; while in lower states of culture, with individuals of similar proportions, and from the simultaneous work of the many, the impersonal, the typical time-style will arise, and with it the art work of this particular style.

This explains, then, for the beginnings of historical tradition the growth of naturalistic and realistic forms side by side. As a naturalistic form there appears by preference the genealogy; as idealistic, the heroic poem. And with this the roots of the contention of ages are laid bare as to whether an historical work is a work of art or not. It will always be a work of art in so far as, even in naturalistic transmission, at least in higher cultural stages, the influence of personal elements cannot be avoided. And it will be peculiarly a work of art as soon as, in the case of an important theme, the imagination can bring forth a composition by means of idealizing retrospection. So that, when the *de lege ferenda* is uttered, one can only advise that to every historical work of our time, not only unconsciously but consciously, the character of a work of art should be given.

But genealogy and the epic are not the only forms of individual-psychic tradition. Together with them and with increasing cultural growth and intellectual leisure, others come to the fore. If it be possible to follow the progress of human events not only through the forms of tradition, as required in genealogy and epic poetry, but more intensively by means of the written letter, the chisel, and the stylus, pedigrees and epics will be superseded — if, indeed, they do not disappear at once — by annals and chronicles. And even these forms can be improved upon. In the history of every human community, the inevitable moment comes in which reason, based on increasing experience, attempts independently to classify and control the world of phenomena, in which the logical conclusion begins gradually to yield to induction, and the miraculous to the causal principle; and if, with this, there begins a really scientific mastery of the outward world, then this too takes hold of historical tradition. And the direction it follows is both naturalistic and idealistic.

In the first instance tradition is ransacked for new sources; when found, these are brought to light in a clear-cut literary form. With untiring zeal the whole field is worked over, and a careful consideration of isolated events is entered upon, of which the object is to show

each single occurrence to be indisputably genuine; it is then polished up, rubbed clear of its rusty casing, and presented to the world.

On the other hand, there is great need for the enormous accumulations of the classified and isolated traditional data produced by the unceasing mills of naturalistic criticism: these data must be turned to account as material for a more general positive structure of history with its divisions and emendations. Of course this is to be done under the direction of an authoritative and constructive mind, and not without the aid of the imagination. How else is a control of the enormous material possible? But the mere memorizing of details and a linking together of particulars, a handling such as was referred to, is clearly proved to be impossible. It is necessary that we employ some means of mechanical combination of the parts of the huge world of facts which knowledge alone can supply, certain forms of criticism to classify the mass of material and thereby control it. And naturally this constructive criticism must deal in the first place with individuals who may still be considered as the only fundamental psychic motor powers of history. If their deeds, their single achievements, and the collective achievements of single persons, — if these can be regarded as parts of a completed series of facts in official service or in an independent profession, they must be grouped according to a system which does not overlook the universal course of things and which makes the whole only the more intelligible. This is the origin of pragmatics.

But the *Divide et impera* embraced in the application of the pragmatic principle proves itself to be insufficient in the face of the mass of traditional material, continually increasing in scope as it does. Above those groups which pragmatism has thus formed to facilitate the handling of events, above the whole survey of heroic deeds, incidents of wars or diplomatic negotiations, we see appearing by degrees the outlines of a better system of classification of material, a system which groups series of events of entire ages within the domain of whole nations and families of nations; as, for example, the outlines of certain oft-recurring incidents in the history of the Papacy, or the types of similar occurrences in the development of the Prussian monarchy, or the main characteristics of religious movements in all respects alike and which are to be detected in the piety of all denominations of Protestantism. It is clearly possible to follow these also in the paths of formative criticism far beyond the simple domain of pragmatism. The common landmarks, too, of historical happenings, especially when pragmatically grouped, can be massed together on the higher plane. With this accomplished, the work of the historian begins at the point where the development of the so-called historic theory of ideas sets in. The term "idea" arises from the application of the word to the historic elements

common to these masses, so that the idea asserts itself as a form of higher thought integration. And in Western culture, as far as investigation permits of a time-limit, it is in its purely historiographic beginnings to be first found in the historical works of the last half of the eighteenth century.[1] One naturally asks here, had these higher forms of integration from the beginning a closer connection with the naturalistic or idealistic conception of history? It is of interest to know that these comparatively abstract forms of intellectual activity had, for purely psychological reasons at first, the closest connection with idealistic historical description. Allied with this is the fact that this activity, having developed along quite primitive lines to a higher plane, was yet capable of assuming at times a transcendental character. The *ideas* which were made the basis of the understanding of the greatest historical concatenations by isolation and abstraction of the elements common to them, did not appear as human *ideas*, but were rather divine powers holding sway behind these events, permeating and determining them, as emanative and associative forms of the absolute working through the fates of men. It was a sort of idealistic historical treatment which slowly took shape in Germany in the course of the second half of the eighteenth century, which then, owing to Schelling, passed over into the great idealistic philosophy of German Romanticism, to which from the point of view of the profoundest theory of life Ranke paid homage as long as he lived, and which, starting from all these points of its development, became a constituent part of all the higher historical training of the nineteenth century.

Meanwhile the strictly epistemological character of the theory of the *idea* had certainly been recognized, and not least clearly at the beginning of the great discussions of historical methods in the early nineties of the last century, and which have not yet entirely ceased. It can truly be said that to-day, practically no one believes in the transcendency of historical ideas, — that is, not fully, nor even in the Ranke sense, — but that, on the other hand, the usefulness of the conceptions contained in them for the grouping of the greater individual-psychic series of events is generally conceded.

While the individual-psychological treatment of history has been thus gradually developed to the state of perfection which marks it to-day, it had long had its limits, and, as far as the main principles of historical comprehension are concerned, its substitution in the form of socio-psychological treatment had begun and had been proved to be necessary.

In the course of the latter part of the seventeenth, but more especially in the eighteenth and nineteenth centuries, all the peoples

[1] Cf. of recent date, Heussi, *Church History and its Writing*. Johann Lorenz von Mosheims, Gotha, 1904.

of Western European culture passed through stages in which the most marked psychic differentiations took place in the individual members of these communities. A certain time-spirit dominated all these nations in which the civilization of the new American world had its origin; it is the spirit which may rightly be called that of subjectivity. Not uniformity, but variety of the subjective perfection of the individual, is the ideal of to-day. And the collective culture of our time rests on vast working corporations of individuals who are no less vastly differentiated each in themselves.

For us it is a well-known state of affairs, this product of nervous activity which has characterized the last six or seven generations, and it is superfluous to describe it in detail. But it would not be inappropriate to trace once and for all, logically and clearly, the consequences of these changes as well for the character of historical science of the present as for that of the immediate future. The result is that for such a time as this only that kind of historical comprehension is adequate which, side by side with the individual-psychological, admits also the socio-psychological treatment, the consideration of the evolution of the collective psychic products of human communities — a treatment which does not merely allude occasionally to this admission, but maintains consistently and unconditionally, that for every case of historical investigation the socio-psychological forces are the stronger, and therefore those that properly determine the course of things; that, consequently, they include the operation of the individual-psychic forces. Granted that this is the universal formulation of the now necessary point of view as it is carried out to-day not only in the field of historiography (in some instances with a clear insight into its consequences), but as seen in the new sciences and new methods which it has made to bear fruit, for example, sociology, or prehistoric excavations; yet it would be a mistake to assume that the revolution in this direction took place suddenly or that it has even now reached its completion. Rather has it gone forward slowly in the course of at least a century and a half, if we reckon according to events in Germany. And the resulting views have been shown, though in steady conflict with the older individual-psychic opinions, to be invincible in spite of the marks of immaturity and a lack of definiteness borne on their face. They stand forth, nevertheless, with a breadth, a logical cohesion, and an inward completeness, which it has been beyond the power of the bitterest hostility to weaken or to remove.

If I carry the study further to the contemplation of the evolution of Germany, because this is most familiar to me, and because, I believe, by keeping to a narrower limit, in the short time assigned me we may gain greater clearness and a more plastic form, I must not fail to mention the honored name of Herder, the hundredth

anniversary of whose death has just been fittingly observed by Germans throughout the world. In the realm of Germanic cultures, and even beyond it, Herder stands as the creator of the conception "folk-soul" (the psyche of the masses). He was the first to admit the importance of the socio-psychic demands for the proper historical comprehension of the most important of all human communities, — nations, — and to draw from these the necessary conclusions. He did it,[1] not in a calm, entirely emotionless, and intellectual spirit of research, but rather by leaps, and with all the enthusiasm of the explorer. His was a psychic attitude toward the new-found inexhaustible material of the socio-psychic inter-relations. But to reproach Herder on this score would betray an extremely small socio-psychic understanding. When communities have made rapid progress toward a higher spiritual existence, it is not in a rational manner or with purely intellectual age-marks of the thought or process. Rather with youthful feelings of anticipation, with an ecstatic presentiment of dimly felt combinations, are the portals of a new epoch entered. Science becomes a prophecy, philosophy turns to poetical metaphysics. That was the character of the great German period of subjectivity that began with Klopstock, and ended in the spreading of the branches of the philosophy of identity — the period to which Herder, as one of its first great phenomena, belongs. Therefore Herder's enthusiastic grasp of the socio-psychic elements of history does not stand alone. It is the property of the whole epoch and dominates the characteristic movement of the time — romanticism. The advance step in all this was a clearer view of the vast combinations of the phenomena of the *mass-psyche* — an advance which brought one to describe vital points poetically, in part or wholly so. But there was not the clear comprehension of the constituent elements of the *mass-psychic* or even of the elementary disentangling of combined phenomena.

It has been reserved to the so-called history-of-civilization method to attempt the description of socio-psychic phenomena, and Freytag, Riehl, even Burckhardt, devoted themselves to this task. Since the last decade of the last century, however, this method has gradually grown out of date.

That no progress was made in historical method during a long period may be traced to the existence of too great a mass of material to deal with. To this another cause must be added. The first great subjective period, which had begun with 1750, ended about 1820, at latest 1830; then about 1870 to 1880 another epoch begins, the second period of subjectivism. In the interval, however (since 1820, at least), the conquests of the first period began to be not so much developed as intellectualized. Enthusiasm yielded to reflection, the

[1] See his *Ideas concerning the History of Mankind.*

anticipative comprehension of rationalism. It is the rebound in which, in the domain of natural science, the period of natural philosophy was replaced by the recent development of mechanics; the change by which, in the field of mental sciences, the old rationalism of the *Aufklarung*, as it had been developed in the generations following 1680, again became conspicuous, though with alterations. The outcome of this movement in the science of history, which had run aground in the impotent epigonism of art and poetry, as in the barren historicism of the mental sciences of the period of 1860 to 1870, was the reappearance of the individual-psychological method. But the socio-psychological point of view was not yet sufficiently well grounded to maintain its supremacy. In the competition of these rival influences, Ranke grew to be a master of his art. This coincidence, in a certain sense most fortunate, and at all events peculiar in its way, gives to him and his works a position all their own. The individual-psychologic point of view now gains the ascendency more completely, though not so much because of Ranke as of his disciples, especially Von Sybel. There was no longer any particular importance attached to the efforts of those who thought and worked according to the history-of-civilization method; these were not opposed because they were not considered as of more than passing significance. It was a time of almost purely political activity: the nation yearned with every fibre of its soul for the long-coveted political unity. Such works as the political history of the old German empire by Giesebrecht, or Droysen's *History of Prussian Polity*, may be cited as important phenomena in this connection. Why should they not have preferred political history — which, to a certain extent, was the individual-psychologic method — to all other forms of history? This explains for the most part the fact that the advance in the socio-psychological interpretation of events, made in the mean time by other peoples, for example, the French in the philosophy of Comte, met with small acceptance in Germany.

But the last decades of the nineteenth century brought the rebound. The years 1870 and 1871 released men from their great anxieties concerning the national life and unity; the development of internal culture comes prominently now to the front. And that happened at the very dawn of a new period of modern psychic existence. The rise of political economy and technology, the rapid development of freedom of trade all over the globe, the victories of science in the realm of nature, even to penetrating into the confines of the inner life: all of this and a host of other less important phenomena yielded an untold amount of new stimuli and possibilities of association, and with that an unheard-of extension of psychic activity as then existing. But of this more in another lecture. The result was a marked differentiation of intellectual activity, and with

it the renewed and determining advance of the socio-psychic elements. This was evident along the whole line of scientific endeavor, especially in the rise of sociology and anthropology during the last decades, with their far-reaching consequences and accompanying phenomena. In the domain of history, this meant a fresh start in the writing of histories of civilization in so far as the development of method was energetically taken in hand; description alone was no longer the watchword, but an intelligent comprehension.

It was now a question of following up the complex phenomena of the socio-psychic life, the working out of the so-called national soul in its elementary parts. The first step on this path would necessarily lead to the immediate analysis of the phenomena that appeared within the existence of great communities of men, that is to say, chiefly of nations. Hence the proving and detailed characterization of socio-psychic eras within this domain: this was the next step. We can see how this was done by Burckhardt who, in his history of the culture of the Renaissance, was the first to point out the great psychic difference between the so-called Middle Ages and the periods of higher culture. Thus a master hand determined and depicted one of the most marked phases in the rhythmic movement of the culture-epochs of a nation. From this point the way must lead on to a statement of the course of a whole series of cultural ages. This has been attempted in my *German History.*

But this is only the beginning of an intensive socio-psychological method. In this blocking out of the culture-epochs, the elements of the socio-psychic movements, as such, are not analyzed, but simply touched upon, and the time indicated in which great movements find their origin. When this is once well done, the question arises whether for these ages of culture there is one common underlying psychic mechanism, and if so, of what nature it is, and what is the aggregate of these underlying, yet apparent, psychic elements. And if these problems are solved, there appears further a last yet perhaps provisional question, namely, whether the psychic elements referred to are really elementary in the sense that they are to be found in the results of modern psychology as hitherto known.

This is not the place to analyze or attempt to solve the questions thus raised; but the means of finding an answer will be pointed out in the later lectures, at least in so far as to prove that, for the mechanism of the great socio-psychic movements, the same elements and laws hold good of which proof is given in recent psychological investigation, and with that of the discovery of the elementary psychic energy proper to the historical movement. At this point there arises, in consequence of the preceding statement, another question. If modern historical science would penetrate to the innermost springs of universal history, find them to be in certain psychic

conditions, does it act thus in conformity with the universal tendencies of the time, and has it accordingly the prospect of a wholesome duration and development? Here is the first difficulty to be solved. The second is as follows: if modern historical science as thus set forth is in accord with the spirit of the time, what is then its relation to and effect on other sciences?

For those who are acquainted with intellectual movements of Western Europe, the first question — that a more intensive study of all phenomena, a closer acquaintance with nature — is easy enough to answer. An impression which at first took hold of the external phenomena with a certainty of touch hitherto unknown was followed in the field of mental sciences and imagination by a psychological impressionism that discovered and revealed the depths of the psychic life which till now had lain concealed under the threshold of consciousness. The spirit brought, in regard to natural sciences, an intensity of observation which appeared almost to threaten those mechanical theories which, during centuries of energetic research, had stood as true and sufficient for all further progress in investigation. In this course of psychic progress the historical science of socio-psychology takes its place as a matter of course; it is nothing but the application of greater intensity of observation to historical material. And there is prospect, therefore, of a further development of this idea, not only on Western and Middle European soil, but since the new psychic existence is due chiefly to the vast extension of association and stimuli which arise from the new technical, economic, and social culture, it will establish itself everywhere where Western civilization prevails, as is actually being shown to-day in the New World and in Japan.

If socio-psychological history is of such growing importance, the more, then, does its relationship to other sciences call for consideration, even though but few words can be devoted to it.

Foremost and clearest is its connection with psychology. History in itself is nothing but applied psychology. Hence we must look to theoretical psychology to give us the clue to its true interpretation.

How often, indeed, has not psychology been named the mechanics of mental science, in particular of the science of history? But the appreciation of this connection and the practical application of it are quite different things. For the latter it is necessary that the study of historical phenomena be extended to the most elementary occurrences and processes, — even those processes with which psychology has primarily to do. It is characteristic of the progress of science during the period of subjectivism of about 1750 or that at the beginning, at least, neither history nor psychology was understood. Of how little importance was psychology when books like Creutzer's *Essay on the Soul* and the fruitful but primitive

journalism of the decades of sentimentalism and the "Sturm und Drang" periods tried at least to set it free from the old traditional metaphysical theories. A universal genius like Kant was right to refrain from taking part in such primitive beginnings, and this stage of philosophy corresponded to that of history.

Psychology and historical science begin to approach each other about 1800, under the influence of the new ideas of the time; but they were as yet far from meeting; between them still lay heavy and bulky masses of scientifically unanalyzed psychic matter.

How different it is to-day in the first decade of a new period of subjectivism, which in so many of its parts seems to be a restoration of the old, only in a higher stage of development. To-day psychology looks back on two generations of investigators, who delivered it from the deadly grasp of metaphysics and made it an independent science. Wundt followed Herbart. And now a younger, a third, generation is at work perfecting and amplifying the results obtained. These results, however they may vary and become matters of dispute, according to the direction of investigation, permit a profound insight into the legitimate course of individual-psychic life, such as was denied to our predecessors. The most important results of all this investigation for the historical student are recorded in the works of Wundt, Ebbinghaus, Münsterberg, Lipps, — collections of data which have already become indispensable to the allied sciences.

This is a condition of things extremely helpful to historical science in the socio-psychic direction. If one penetrates into the depths of historic causation, it will be found that psychology has prepared the way and has become a safe guide to the historian, who wishes to make known his discoveries in formulae in which they may be fitly expressed.

In this way psychology and historical science entered into partnership. The partition between them is giving way, and certainly one may say — if it may thus be expressed — that psychology increasingly serves as a mechanical force to history.

But the relations of the two sciences are by no means thus completely described. Just as along with the psychology of the normal adult there must be kept in mind that of childhood and old age in order that the antithetic character of all psychic processes, the full extent and the whole circle of the potentiality of the human psyche, as far as the individual is concerned, may be appreciated and the corresponding biological functions be observed, so it is necessary to obtain a full comprehension of the meaning of the socio-psychological process in history in order to proceed in a manner quite analogous. In this instance psychology is dependent on history, and only from an intensive investigation of the cultural periods of mankind as a whole are the data attainable which will

enable one to recognize the antithetic tendencies of the human mind in its whole empiric compass.

Thus we get a starting-point from which the relation of modern historical science to the other mental sciences may be explained. These may be divided into applied, such as theology, jurisprudence, political economy, politics, etc., and into constitutive, history of language, literature, art, etc. It is clear that the constitutive branches simply disappear as parts of modern historical science. For if the latter concerns itself with the investigation of the dominating social psyche of the times in question, and with its changing forms during the various ages of culture, it can only do this by taking a survey of all its embodiments in history from time to time. These are to be found in language, in poetry, and art (that is, style), in science and philosophy, the climax of intellectual attainment, argumentation, etc. And correspondingly, socio-psychological history is the universal foundation of all these sciences, and these are related to it as amplifying and special sciences. But even more is the case with relation to the applied mental sciences. For the latter, which have reference to a certain given psyche of a certain cultural period, require a general knowledge of this period, which leads to the socio-psychological science of history.

Historical science therefore plays a double part: (1) as the basis of the practical as of the theoretical mental sciences, and (2) as stimulus to an historical method within the range of psychology. It is a position which is quite normally conditioned by the fact that psychic movements pass, as regards time, far more rapidly than physical movements, and that the change appears to us qualitatively different on that account. If in their relations the psychic developments of a given time had corresponded to the physical, only one mechanism would be needed to dominate them both; for they would have shown a hundred thousand and more years ago the same character as they show in the traditional records of to-day. Now it is well known that where the conception of life is in question, this is not the case; for example, in animal and plant organisms. In human life, that is, in history, a moment of much quicker change of phenomena intervenes. How is it to be controlled? It can only happen in that psychology as a psychological mechanism is allied with a functional idea of the time and becomes at once variable. And this functional idea historical science must supply. Through this it grows to be an evolutionistic psychology fully suited to the actual course of things and as such the basis of mental sciences, both theoretical and applied.

Is not the relation of the historical to natural science determined by the last few remarks, even if these are only general propositions? I think so, if one does not indeed include physics and chemistry in

the historic point of view, — sciences the objects of which belong to the passing moment. However, if one does this, nothing remains but to admit that there are biological agencies even in inorganic nature; with this we are driven out of the sphere of science into the atmosphere of hypothetic philosophy, into metaphysical mode of thought.

It is not necessary to transcend the bounds of our subject, to pass over the border-line that divides philosophy and science. But one thing has been determined by these reflections, — that the modern science of history has opened up for itself a vastly greater field of endeavor and conflict, and that it will require thousands of diligent workers and creative minds to open up its rich and in many respects unknown regions, and to cultivate them successfully.

THE PRESENT PROBLEMS OF MEDIEVAL HISTORY

BY GEORGE BURTON ADAMS

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In the recorded history of the human race the period known as medieval history occupies, as its name indicates, an intermediate place. If we leave out of account that portion of our long past which must be reconstructed by inference from a study of surviving primitive man, or from monuments and archæological remains, and limit the meaning of the term "recorded history" to that history which has been recorded in books and written documents, then the period of the Middle Ages occupies what may be called the middle third of recorded history. The general problem which this portion of the field presents to students of medieval history is obvious. The results of ancient civilization furnish our starting-point. With these in hand it is our business to show how they were transformed under the influence of new conditions, how new forces entered the field, what new institutions arose, in what way and to what extent civilization recovered its losses by the way and became more diversified and enriched, and finally to put our results in such shape that they may serve to explain the beginnings of modern history and to furnish the key to many of its difficulties. It is our business first of all to find out the facts as they actually were, in so far as this can be done, to indicate carefully the exact degree of our knowledge, and finally on the basis of this knowledge to construct a continuous and comprehensive narrative of the whole period in order to set forth the results which have been reached.

But looked at more specifically as a field of investigation medieval history, or at least the first half of it, has enjoyed one great advantage over other periods. The history of the Teutonic tribes, and especially of the great race the Franks, who dominated Europe for some centuries and whose institutions native and acquired lie at the foundation of all later constitutions, belongs at once to the national history of the two peoples who have been the leaders of modern historical scholarship, Germany and France. It has followed from this fact that the history of that large portion of the continent which was included in the Empire of the Franks has been explored with micro-

scopic care from various points of view and with mutually correcting natural bias. We may, I think, say with truth that there is no other considerable portion of history, ancient or modern, that has been as yet investigated with such minuteness as that which embraces the history of Europe from the beginning of the fifth century to the end of the ninth, and we may add that, as a natural result, regarding all questions of importance in this field there is now a nearly or quite general consensus of opinion among scholars.

In saying this I do not mean to assert, of course, anything like absolute agreement. Probably it would be difficult to find any single point of importance on which some scholar of reputation does not stand for an opinion of his own. But I do mean to say that there has now been formed a definite body of opinion on all the essential facts of both political and institutional history during that period in which the great body of scholars are agreed. Nor do I mean that these conclusions will not be attacked in the future. Aberrations from them, heretical attacks on them we might perhaps call them, will occur now and again, and their effect will be to correct matters of detail, to rearrange emphasis on particular points, or to bring into the field some minor force or circumstance overlooked; but it is hardly likely now that this body of conclusion can be seriously called in question; it is more likely that dissenting opinions will in the future find even less support than they do at present. Nor is it probable that those lines of work of which I shall speak later as likely to lead to the largest new results can modify our present conclusions in any revolutionary way.

A concrete example may show more clearly exactly what and how much I mean. At first sight there would seem to be no topic of history in regard to which opinion is less settled than that of the origin and formation of feudalism. It would seem to be a subject on which the greatest diversity of view prevails, and in which there is an almost inextricable confusion of theories and even of statements of fact. But this would be a superficial view only. A careful comparative examination of the whole field would show that in the last twenty years the opinion of those who have most carefully studied the subject has practically settled down on a certain line of explanation which may now be definitely called the orthodox doctrine of the origin and formation of feudalism. The long controversy between the first scientific students of the subject, Waitz and Roth, which once seriously divided opinion, is practically settled in so far as it concerns fundamentals. Individual students whose opinions are entitled to the greatest respect may hold peculiar views on a single point, like the view of Professor Brunner on the origin of vassalage, but they influence the prevailing opinion very little or not at all. Professor Flach is searching the whole field with great care, and

announcing somewhat revolutionary views, but he is making no converts. The influence of economic factors in the growth of feudalism and the relation of the economic institutions which they produced to those more strictly political, produced chiefly by a different set of causes, have long been a difficult puzzle and a source of confusion; but these two great sides of feudalism have now been given their proper place side by side and their proper share in the common result. Their relation need no longer be a source of misunderstanding to one who takes both sides equally into account. It is difficult to see from what source or in what way the prevailing line of explanation of the origin of feudalism is to be successfully attacked in any essential point. Minor points remain to be cleared up, new light will be thrown on many details, changes of emphasis will occur, but no man can hope to undo the work of Waitz and Roth, of Fustel de Coulanges and Brunner, or seriously reform the common result which they have created.[1] It is agreement of this sort which I would assert to be practically final, and disagreement of this sort which, I would declare, does not affect practical unanimity of opinion.

In view of this condition of things, which I believe will be more clearly recognized the more carefully the situation is considered, I should like in all earnestness to raise the question whether the time has not now come when the main force of our vigorous and advancing historical effort should be turned into some other portion of the field; whether scholarly work in the first half of medieval history is not likely to find itself more and more shut up to the study of minute facts, which are, it may be, interesting in themselves, but of no essential influence on the real current of affairs. If this is true, and the students of medieval history continue in the future as they have in the past to spend their chief effort in this field, are we not running some risk of that danger which seems to threaten every science at some period of its history, the danger of the development of a more or less barren scholasticism, of magnifying method into the all important thing without reference to the result to be reached, of considering the establishment of the fact to be the end of all effort, regardless of the use to which it can be put when we have found out what it is. It is not the place here to call attention to the few and not as yet important signs, which I think can even now be detected, of the approach of this danger. Suggestion rather than argument is the purpose of this paper. And the first suggestion which I would make is this: have we not now reached the point

[1] Such a statement in regard to the probable results of future investigation will be thought by many somewhat hazardous. In so far, however, as objection may take a specific form, either now or in the future, it will be found, I think, to be due to an opinion that some modification of detail ought to be considered a modification of fundamentals. My statement really means that such an opinion is likely to remain individual and not to become general.

in our study of the first half of the Middle Ages when we should expect and encourage, as the next step in advance, constructive rather than analytical work?

Now I believe there is no student of history who will assert that the establishment of the fact as the result of a special investigation is the ultimate object of historical study. However great may be the intellectual pleasure of the discovery of the hitherto unknown fact by a truly scientific process — and there are few greater — and however great the consequent temptation to regard the process and its immediate result as of supreme importance, we all know that to find out what really was, or what really happened, at a given time or place is only a means to a further end. And whether or not we quite believe that, as has been said, the only really permanent work is the artistic embodiment of truth in forms of beauty, it is true that the ultimate purpose of all historical activity should be the construction of a continuous narrative account of the life of mankind, or of a nation, through a given epoch or through the whole course of time. Such a narrative must be based, of course, upon a great body of strictly scientific investigation which must go before it. It must leave nothing to conjecture or theory that is capable of proof, but it is not necessary that it should make mention of every minute fact which has been discovered. Its object should rather be to display in proper proportion and sequence the sum total of influences, both facts and forces, which have really determined the current of events with their results, destined in their turn to become the causes and conditions of a new era. Whether such a comprehensive picture in the life of the race will be a work of art, like the ideal which some earlier historians have had in mind, whether it will teach mankind lessons of morality, or of economic advantage, or of practical statesmanship, it is not the business of the historian to inquire. But it is his business to determine when the work of special investigation in any period has gone so far that the work of broad construction is possible, correctly inclusive and exclusive, with proper perspective, and with such a sound foundation of knowledge that future investigation is not likely to overturn any really essential portion of it. We shall all agree upon this, I think. Nor do I think there will be many to deny that one of the surest signs that a science like ours is passing into a condition of mere scholasticism is that such a stage of approaching completeness in the history of investigation should be reached and not naturally arouse the spirit and power of constructive work on a broad scale. That the workers in such a field should be content to spend their best efforts in determining slight details, whose influence on what the age was really doing was without significance, would be a most deplorable and hopeless condition of things. That investigation has

reached a stage like this in very few fields of history is certainly true. I wish to be distinctly understood to raise question whether that stage has not been reached in the study of the period extending from what we commonly call the fall of the Roman Empire to the fall of Charlemagne's, and whether we ought not now to expect and encourage as the next proper advance of our work attempts at a final constructive history of this age. It is, to be sure, only a portion of medieval history — a fragment of a larger age, and in that sense a continuous narrative of its history cannot be final. But that is in a sense true of every period however long, and this has a unity of its own — a natural beginning and ending — which makes appropriate its treatment by itself at least as preliminary to a history of the whole Middle Ages.

This judgment which I have passed on the condition of our study of the earliest period of medieval history demands that we should recognize the fact that there is a very large body of historical happenings without appreciable influence on the general result; that very many events in the past, of interest in themselves, might not have occurred at all, or might have occurred in some quite different way, and the final outcome, the decisive result, have been unmodified in any essential matter. We may understand the really important contributory work of an age or a generation without understanding every detail about it. That this is so I cannot here stop to prove, but I expect little disagreement with this view from students of history whose work has led them to consider the contributions of one age to another, or to study carefully the larger movements of history.

To those of us who have in our hands not merely the directing of our own productive efforts, in which perhaps our interests are now so fixed that change would be neither advisable nor desirable, but also the work of directing by personal advice and the selection of topics the forming interests of the scholars of the next generation, the question is one of great responsibility. Training in constructive work is not easy. The power of comprehensive vision combined with that keen insight which detects the true historical perspective is the gift of the gods rather than the creation of the teacher. Nor would I overlook the fact that final constructive work is to be expected only from the man who has been thoroughly trained in the methods of scientific investigation, and whose critical judgment has been sharply aroused and disciplined in the process. For however brilliant the constructive imagination or however keen the historical insight, if they be not guided and limited by a thoroughly disciplined critical judgment within the limits of known facts, they will prove to be snares and their results delusions only. We must also add the fact that from the limited number and character of the sources at its command and its consequent ability to create in many cases

almost the artificial conditions of a laboratory experiment, medieval history, and especially the first half of it, must remain the best of all fields for training in scientific investigation and the discipline of the critical faculty. But while we may insist, with a degree of justice that is likely to be recognized by instructors in other fields of history, that the future historical scholar in whatever line of research should receive a part of his training in true seminary courses in medieval history, that is quite different from endeavoring to direct the life-work of the student into the earlier half of that period. Should it not rather be our endeavor to detect among those who come under our training the few from whom constructive work of a high order of ability may be expected, and by such means as we can use and with a view to actual attempts at such a history of this age, to assist in their growth in the comprehensive grasp of a whole era and in the power to judge truly the relative value of facts which are chief among the qualities demanded in final historical work?

Will you allow me to break the direct thread of my discourse at this point to say that to the instructor in medieval history at least the future of the historical seminary presents in my opinion a practical problem of some seriousness. The prevailing, I may almost say the fashionable method of conducting seminary work at present is the essay method — the preparation by the members of the seminary of set essays or reports on assigned topics. The essay method is the best, perhaps the only method of teaching constructive work, and for this purpose it should be employed. Its defects are the great difficulty of combining with it instruction in the details of historical method and the discipline of the critical faculty, demanding for these results qualities in the instructor which are not common, and qualities in the student which are still more rare, at least in America. Its great danger consists in the fact that it is the easiest of all methods with which to get an appearance of success, so that both instructor and student may plausibly delude themselves with the belief that they are doing the real work for which the seminary was intended when they are merely devoting themselves to what should be the finishing touches, leaving the fundamental work undone. I mention this briefly and only in passing, but I believe there is here a practical problem that demands the careful consideration of the university teacher of medieval history.

When we turn from the first to the second half of the Middle Ages we are confronted by an entirely different situation. For one thing, in the past, the large majority of the ablest men who have devoted themselves to the study of medieval history have found the first half of the period, for reasons perhaps not difficult to see, far more attractive than the second, and have not hesitated to yield to this attraction. While this is perhaps less true of English scholars than of those of

other languages, the exception is not great enough to change the rule. Fewer men have given themselves to the study of the second than to that of the first half. Nor has there been any such converging of effort on a single line of history as in the earlier field. Indeed, such unity of interest is not possible in the later period. The nations, whose appearance constitutes the dissolution of the Frankish Empire, separated from one another because of differences of condition, and these differences increased rather than diminished after their separation. The scholars of each nation have naturally found their proper field in the study of their own national history. And while there is a certain similarity in the larger features of these distinct lines of national growth, there is not such a degree of likeness that what is found to be true of one may with confidence be asserted of any other.

It has naturally resulted from this fact, not only that there is a larger range of unexplored or only partially explored territory in the later period, but that there has as yet been formed no such general consensus of opinion, except upon here and there a single point, as I have asserted to exist in the earlier. Here is a field in which the ardor and enthusiasm of a whole generation of coming historical scholars may find profitable employment in the investigation of the fact as it really was, if the present generation will only have the courage to confess that work of real importance in its own field is about finished, and to turn the interests of the rising generation as completely as possible into a new direction.

The incomplete and fragmentary character of our present knowledge in the second half of medieval history as compared with the first, I do not need, I am sure, even to illustrate. In narrative history proper, in the merely political history of states and dynasties, how many broad gaps are there not, like the reigns of Edward II, of Henry VI, in English history, as yet practically unfilled by any minutely critical study. How much of the whole field is still to all intents virgin soil. And even in those portions which have been carefully studied in detail, the reigns of William the Conqueror, of John, of Henry IV, no one can believe the work to be yet complete. However minute and painstaking may be the study of the man who first breaks way for our knowledge of an age, it can never be final. It must be subjected to the searching examination and criticism of other scholars, turned to this light and to that, filled out, cut away, and reshaped, before we reach a firmly fixed agreement on the age, of which indeed the work of the *bahn-brechenden* scholar is likely to form the solid foundation. What portion of the narrative, political history of the later Middle Ages has yet reached this stage?

If we turn to the institutional history of the period, the condition of our knowledge is equally or even more backward. The constitutions of modern states excite great interest and have been or are

being most thoroughly studied. The history of institutions from Roman days to the triumph of feudalism may be called, as I have said, almost, or quite a completed science. Even of feudalism itself, as it stood established in the thirteenth century on the eve of its fall, we may assert almost as much. But what have we a right to say of the age that follows. And yet under every modern constitution lies feudalism. The age of feudal decay was the age when all modern institutions took their form, when the direction of their growth was fixed, and when those momentous differences which have controlled the peculiar destinies of nations were determined. What can we understand of the origins or peculiarities of our present constitutions until we know surely under what conditions and into what forms the feudal constitution of a given nation dissolved itself. Of the history of England this is especially important, because of the wide conquests in other lands which the English constitution has made and is still destined to make; and yet the great bulk of English institutional history as it exists in printed form traces the origins of that constitution back to theoretical, imaginary, or largely misunderstood beginnings in Saxon times. And if the judgment of the scholars of the day is finding a sounder basis for English constitutional history in Frankish rather than in Saxon institutions, this change of doctrine has as yet made but little impression on popular opinion. The process needs to go, however, a step further yet, and the real explanation of the more important peculiarities of the English constitution to be found not merely in Frankish institutions as introduced by the Norman conquest, but in that thorough feudalism which accompanied or shortly followed that event.

May I be allowed one concrete example. The right of impeachment, though it may be destined to longer life in the United States for purposes different from those for which it was originally intended, is practically obsolete in England itself, owing to the development of the cabinet system, but it is of great historical interest for its part in the establishment and defense of the constitution. If now we look critically at the details of the impeachment process we shall find, I think, so peculiar and astonishing a process, that we shall feel justified in declaring that it could never have been invented *de novo* by any absurd freak even of the human mind; but if we trace it back into the feudal conditions and institutions from which modern legislatures arose, we see at once how naturally and simply it came into being.

In the study which has already been given to the transition from the medieval constitution to the modern, those features which seemed the most striking have received the most attention, — the position of the king, the development of a legislative system, the growth of the judiciary. But while we have collected on these subjects a

large body of knowledge which seems firmly established, yet it will be found on careful analysis that considerable portions of it are based on general views rather than built up from an exact knowledge of detailed fact. Current ideas of the origin of the representative system are based mainly on the surface appearance of things, and need to be subjected to the test of a minute analysis of sources. Scarcely an attempt has been made as yet to trace scientifically the growth of what may be called the national feeling, the sense of a corporate unity in the community as over against the king, or over against the government of the state. The transformation of the feudal baronage into a social nobility is popularly set much too late in time and is hardly at all understood. These are but examples of numerous fields that remain to be worked, but it is plain that we must be in possession of the results of the study of them before we can say anything final of the origins of modern constitutions. The three things which I have mentioned constitute indeed the very essence of the transformation of the medieval into the modern state. If this is true of those subjects which have naturally attracted the first attention of students, it is yet more true of other sides of the process. Almost the whole administrative system — for instance, the rise of the modern governmental departments, the development of modern out of feudal taxation — is practically unknown territory. Is there in truth a single institution of this transition period of which we can say with confidence that we know its history as thoroughly as we do most of the institutions of the Carolingian or of the early feudal age?

There is also another line of study, representing a second stage in our knowledge, since it must be based on a considerable body of already established fact, in which only a beginning has been made — I mean the comparative study of institutions. I have just said that history in the second half of the Middle Ages divides into separate fields along national lines which have not much in common with one another, and that we cannot assert with confidence that what we find true in one field exists in another. This is certainly a fact. The comparative method itself has also been attacked as unsound and unsafe, and it must be admitted that it leads easily to abuses, especially when it is used to establish the unknown. If, however, it is employed with care and less to prove what was the fact than to assist us to understand what we already partly know, it has an important and even necessary service to render. The feudalism of the kingdom of Jerusalem throws much light on the feudalism of the kingdom of England. The *curia regis* was transformed in many states and in the same general age into the beginnings of the modern legislature. At the same time in the various states and in much the same way, the judicial system, the administrative machinery, the financial

organization, were differentiated from one another out of the older and simpler feudal government. It must be true that this process of differentiation in one state had much of similarity with that in another, and while we shall never be justified in saying that because we are certain of a fact in French history we must therefore find it in English, we have a right to expect a comparison of results to clarify our knowledge, to help us in the understanding and arrangement of details, and even to point out to us where to look and what to look for. Here then is another large field of work in which already something has been done, but hardly more than enough to show what is possible.

It would be possible to point out still further work that needs to be done in the second half of the Middle Ages. I have taken my illustrations from the field of political history, which is the peculiar field of this Section, and their form has been determined by my own special interest; but the ecclesiastical, intellectual, economic, artistic, and scientific revolutions of that period were not less decisive than the political and institutional, nor is a thorough understanding of them less essential to our knowledge of the age. The same work must be done in all these directions, and the results brought into form for combination in a common whole before the period of preparation can be ended. Here is surely work of the very highest order for a generation, for a half-century, of historical investigation. The militant progressive historical scholarship of the first half of the twentieth century, in so far as it deals with the Middle Ages, should find in the last five hundred years of that field the place to apply with rich results the keen critical insight, the skilled historical judgment, which should still be trained in the study of the first five hundred years. Perhaps it may be thought that fifty years is too short a time in which to bring our knowledge of these centuries to a practical completion, but if we take account of what has been done in our knowledge of the earlier period in the last fifty years, and especially if we consider the amount of surely established knowledge with which Waitz and Roth began what it is not too much to call the first scientific study of the Middle Ages, and compare it with that with which we may now begin our study of the later period, we have every reason to look forward to the practical completion of our task in but little more than the lifetime of a modern generation. Then it will be possible for a definitive work to be written on the whole of the Middle Ages. Then we may hope to understand with some completeness the origins of modern governments and to be able to find the historical explanation of their peculiarities.

At the beginning of this paper I spoke of certain lines of investigation as likely to lead to the largest new results in our field. The pro-

fessed historian is not the only student of the problems of medieval history. A large amount of work is being done upon them and more will be done in the future by two groups of scholars who are not, in their opinion at least, of his guild, by the economic historian and by the sociologist. And the fact that these scholars do not always look at our problems from quite our point of view or formulate them in quite our terms has its own advantages. Much of their work is certain to be of a sort which the scientific historian cannot approve, but in the end, it is my firm belief that we have to expect from their labors more light on the difficulties still remaining in the first half of medieval history than from any efforts of our own, very great help in solving the problems of the second half, and throughout the whole period much assistance in reaching a better understanding of what is already well established. The economic historian should indeed consider himself — and many of them do — primarily an historian. He should be as thoroughly trained in the methods of historical research as the historian and as scrupulously bound by them. In his study of the facts it should be his first and highest ambition to ascertain "wie es eigentlich gewesen." In all this he should be the historian, but he should be more than this. With a training in economic science equal to that which he has received in historical method, he should be able to detect in many crises of history more quickly and clearly than we can the presence of decisive economic factors, and be able to explain their action in such a way that we shall come to understand more perfectly the result produced. That there are many places in the history of the Middle Ages where work of this sort is greatly needed will be instantly admitted. Beginnings have been made through the whole period, but except here and there nothing but beginnings. The origin of feudalism and its fall; the transformation of the slave into the serf and of the serf into the free laborer; the effects of the scarcity of money and of its revived use; the decline and recovery of commerce; the rise of the third estate and the renewal by the state of regular taxation; these are general topics whose mere mention suggests the useful service which the economic historian has rendered or may still render. Minor topics, like the question of the commercial factors in England's parliamentary advance in the fourteenth century, are innumerable. It is hardly necessary to say that the professed historian welcomes most heartily such work upon the problems he is trying to solve, that he stands ready to afford it every encouragement, and to incorporate its results with his own or to modify his own by them whenever necessary. He sometimes finds the tone in which they are expressed a trifle trying, but that is not a serious matter. It is characteristic of a young science to exalt itself, to magnify the importance of its results and the necessity of its processes. More serious is the tend-

ency, of which there have been many examples, and which sometimes seems as if it were inevitable in the economic historian, to stop the process of investigation too soon, in order to theorize, or to attempt to explain the facts before they are understood. Would it be unfair to say that in proportion as economic training predominates over historical, in such proportion is this tendency present? However this may be, it is true that against the tendency to theorize too soon there is only one effectual safeguard, and that is the thorough discipline of the critical judgment, which it should be the business of historical training to impart to the point where the mind may be trusted instinctively to know when the fact is well established and when it is still more or less doubtful. In any case the historian should not yield to the temptation to judge this tendency more severely in the economic historian than in imperfectly trained members of his own company, and he should be ready as in their case to separate the real result from the premature explanation. While I desire to express strongly, as I have done, my belief that we have such a gain from these investigations, I am also desirous of repeating emphatically my earlier statement that in my opinion none of the more important results which the historian has already reached concerning the facts of the first half of the Middle Ages is likely to be overturned or seriously modified by the study of economic history.

With the sociologist we have a less close relationship, and from him we have to expect much more that is not so directly historical. We have indeed, I think, a strong tendency to look on his invasion of our preserves with suspicion. The economist's tendency to explain seems carried in the sociologist to an extreme which it is impossible to resist, and the numerous premature attempts which he has already made to formulate the fundamental laws of history, or to propound its final philosophy, give us good ground for suspicion. We remember that such attempts to explain history philosophically were very numerous in the infancy of our own branch of learning — as speculation is perhaps in the infancy of all learning; we see very quickly that the sociological historian is not always trained in the methods of historical criticism, that he is apt to get his knowledge of facts at second-hand, and often imperfectly, with frequent misunderstandings, and with a strong tendency to take them from one-sided and partial students who exaggerate the historical factors in which the sociologist is himself most interested, — and that he often regards as established facts the conclusions of some single scholar whom no one follows; and we are tempted to suspect that metaphysical phraseology sometimes conceals a lack of clear and definite thinking.

If I have stated these points of criticism strongly, it is in no unfriendly spirit. It is rather because I believe so firmly in the great

service which these studies may render to our own if only the method is historical when the problem is historical — a service so great that without the work of the economic historian and the sociologist, the task of completing our scientific knowledge of medieval history seems to me almost impossible. What their method should be in the study of problems not historical, I do not presume to say.

But from the work of the sociologist in two different fields at least, lying at the two extremes of history, we have, I think, to expect light on the difficulties of medieval history. The first we call the prehistoric field, the study of primitive man, the earliest institutional development of the race. The term prehistoric is, of course, in one sense a misnomer. The investigation of primitive institutions is really a study in history. It differs from the study of medieval institutions only in the character of the material from which conclusions must be drawn, but as a field clearly distinct in itself it is now generally recognized as the province of the sociologist, and to this there can be no objection. Here is an ample opportunity for truly scientific work, and much has already been made of it. From its results light is to be expected on many details of medieval civilization, manners, practices, and beliefs in daily life, in government, law, and religion. Even modern society shows many survivals of primitive ideas, and medieval many more. The investigation of these subjects will fill out and enrich our knowledge of details, but they are not likely to affect the more important conclusions of historians. From the other field of sociological study, the study of present society, we have, I think, far more of importance to expect. We may not agree in full with the dictum that we can only know history by knowing present society, but the value of such a knowledge is obvious. The social reasons for things are far more easily discovered from a study of present than from a study of past conditions, and social reasons probably have a larger share in the explanation of results than we historians have always been inclined to allow. At any rate light on social organization, movements of population, the operation of race as an active historical factor, the influence of sanitary conditions, the sources of ideas of morality, religion, and law, and the methods of their growth, and a dozen other equally important subjects will be very welcome to us. The results of the sociologist's work, when they are put in form for us, will assist us less in determining what the fact was — that is primarily our work — than in understanding it when known. They will be confirmatory and enlightening rather than revolutionary, but no less important on that account.

In conclusion, let me congratulate all workers in medieval history, whether they are working directly or indirectly, whether they bear the name of historian or not, on the great results which have been achieved in our field in the last fifty years, and still more on the out-

look for the coming half-century. It is a great epoch in the history of any science when it begins to see in clear detail the road which it must follow to the not distant goal — not to the knowledge of every fact, but to the completion of its most important task. It should be to every traveler on the way a broadening and inspiring vision.

SUPPLEMENTARY PAPERS

A short paper was contributed to this Section by Professor Earl W. Dow, of the University of Michigan, and Secretary of the Section, on "The Early Commune and the Local Secular Law at Beauvais," in which the story of the suit of the canons at Beauvais was set forth in a new and attractive form and much light thrown upon the ecclesiastical laws of the age. Supplementary to this was an interesting discussion of the development of the Commune at Beauvais and the local statutes governing its administration.

A short paper was also presented before this Section by Professor N. M. Trenholme, of the University of Missouri, entitled, "A Communication Relative to the English Monastic Towns." The paper discussed briefly the establishment under monastic control during the early Middle Ages of a number of important towns usually attached to some of the greater Bénédictine abbeys, with special privileges and immunities confirmed by charters or gifts. The origin of these towns, the conflicts between ecclesiastical and lay authorities, and the laws governing these special privileges were clearly and forcibly set forth.



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SECTION D

MODERN HISTORY OF EUROPE

SECTION D

MODERN HISTORY OF EUROPE

(*Hall* 3, *September* 22, 10 *a. m.*)

CHAIRMAN: HONORABLE JAMES B. PERKINS, Rochester, N. Y.
SPEAKERS: PROFESSOR J. B. BURY, University of Cambridge.
PROFESSOR CHARLES W. COLBY, McGill University, Montreal.
SECRETARY: PROFESSOR FERDINAND SCHWILL, University of Chicago.

THE Section of Modern History of Europe was presided over by Honorable James B. Perkins, of Rochester, New York. In introducing the speakers the Chairman stated that no period in the long record of man's development has greater interest to the historical student than that which we roughly classify as the modern history of Europe. In it we have scientific discoveries and modifications of religious belief, which have changed our theories of man's place in nature and of his relations to the powers which control nature; we have developments in political science, which have replaced the forms of government that prevailed three centuries ago by the governments of popular rule which now exist in the most advanced nations of the world. These also may be modified in the future, but they will never return to the forms of the past. We have industrial changes, that have altered not only the economic but the social character of society. The study of such a period demands the highest faculties of the historian and affords possibilities of the most fruitful return.

THE PLACE OF MODERN HISTORY IN THE PERSPECTIVE OF KNOWLEDGE

BY JOHN B. BURY

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To define the position which the history of the last four hundred years occupies as an object of study, or to signalize its particular importance as a field of intellectual activity, requires a preliminary consideration of the place which history in general holds in the domain of human knowledge. And this consideration cannot be confined to purely political history. For political history is only an abstraction, — an abstraction which is useful and necessary both practically and theoretically, but is unable to serve as the basis of a philosophical theory. Political development in the chronicle of a society, or set of societies, is correlated with other developments which are not political; the concrete history of a society is the collective history of all its various activities, all the manifestations of its intellectual, emotional, and material life. We isolate these manifestations for the purpose of analysis, as the physiologist can concentrate his attention on a single organ apart from the rest of the body; but we must not forget that political history out of relation to the whole social development of which it is a part is not less unmeaning than the heart detached from the body.

The inevitable and perfectly justifiable habit of tracing political development by itself, and making political events chronological landmarks, led to an unfortunate restriction of the use of the word *history*, which, when used without qualification, is commonly taken to mean political history, and not history in the larger concrete sense which I have just defined. This ambiguity furnishes an explanation and excuse for the view that history is subservient to political science, and that the only or main value of historical study consists in its auxiliary services to the study of political science. This doctrine was propagated, for instance, by Seeley, and gained some adhesion in England. Now if we detach the growth of political institutions and the sequence of political events from all the other social phenomena, and call this abstraction history, then I think

Seeley's theory would have considerable justification. History, in such a sense, would have very little worth or meaning beyond its use as supplying material for the inductions of political science, the importance of which I should be the last to dispute. But if the political sequence is grasped as only one part of the larger development which constitutes history in the fuller sense, then it is clear that the study of political history has its sufficient title and justification by virtue of its relation to that larger development which includes it, and that it is not merely the handmaid of political science. Political science depends upon its data, and, in return, illuminates it; but does not confer its title-deeds.

But a larger and more formidable wave, threatening the liberty of history, has still to be encountered. It may be argued that the relation of dependence holds good, though it must be stated in a different and more scientific form. It may be said: Political science is a branch of social science, just as political history is a part of general history; and the object of studying general history is simply and solely to collect and furnish material for sociological science. Thus the former theory reappears, subsumed under a higher principle. The study of history generally is subordinate to sociology; and it follows that the study of political history especially is subordinate to that branch of sociology which we call political science. The difference, and it is a very important difference, is that, on this theory, political history is no longer isolated; its relations of coördination and interdependence with the other sides of social development would be recognized and emphasized. But the study of general history, including political, would be dependent on, and ancillary to, a study ulterior to itself.

Now this theory seems to run counter to an axiom which has been frequently enunciated and accepted as self-evident in recent times, namely, that history should be studied for its own sake. It is one of the remarkable ideas which first emerged explicitly into consciousness in the last century that the unique series of the phenomena of human development is worthy to be studied for itself, without any ulterior purpose, without any obligation to serve ethical or theological, or any practical ends. This principle of "history for its own sake" might be described as the motto or watchword of the great movement of historical research which has gone on increasing in volume and power since the beginning of the last century. But has this principle a theoretical justification, or is it only an expedient but indefensible fiction instinctively adopted? Is the postulate of "history for its own sake" simply a regulative idea which we find it convenient to accept because experience teaches us that independence is the only basis on which any study can be pursued satisfactorily and scientifically; and while we accord history this status, for reasons

of expedience, is it yet true that the ultimate and only value of the study lies in its potential services to another discipline, such as sociology?

It seems to me that our decision of this question must fall out according to the view we take of the relation of man's historical development to the whole of reality. We are brought face to face with a philosophical problem. Our apprehension of history and our reason for studying it must be ultimately determined by the view we entertain of the *moles et machina mundi* as a whole. Naturalism will imply a wholly different view from idealism. In considering the place of history in the kingdom of knowledge, it is thus impossible to avoid referring to the questions with which the so-called philosophy of history is concerned.

If human development can be entirely explained on the general lines of a system such as Saint-Simon's or Comte's or Spencer's, then I think we must conclude that the place of history, within the frame of such a system, is subordinate to sociology and anthropology. There is no separate or independent precinct in which she can preside supreme. But on an idealistic interpretation of knowledge, it is otherwise. History then assumes a different meaning from that of a higher zoölogy, and is not merely a continuation of the process of evolution in nature. If thought is not the result, but the presupposition, of the process of nature, it follows that history, in which thought is the characteristic and guiding force, belongs to a different order of ideas from the kingdom of nature and demands a different interpretation. Here the philosophy of history comes in. The very phrase is a flag over debated ground. It means the investigation of the rational principles which, it is assumed, are disclosed in the historical process due to the coöperation and interaction of human minds under terrestrial conditions. If the philosophy of history is not illusory, history means a disclosure of spiritual reality in the fullest way in which it is cognizable to us in these particular conditions. And, on the other hand, the possibility of an interpretation of history as a movement of reason, disclosing its nature in terrestrial circumstances, seems the only hypothesis on which the postulate of "history for its own sake" can be justified as valid.

This fundamental problem belongs to philosophy and lies outside the scope of discussion. All that can be done for the present occasion is to assume the validity of that kind of interpretation which is generally called the philosophy of history, and, starting with this postulate, to show the particular significance of modern history. Perhaps it may be said that such interpretation is quite a separate branch of speculation, distinct from history itself, and not necessarily the concern of an historical student. That is a view which should be dismissed, for it reduces history to a collection of annals. Facts

must be collected, and connected, before they can be interpreted; but I cannot imagine the slightest theoretical importance in a collection of facts or sequences of facts, unless they mean something in terms of reason, unless we can hope to determine their vital connection in the whole system of reality. This is the fundamental truth underlying Macaulay's rather drastic remark that "facts are the dross of history."

It is to be observed that the idea of history as a self-centred study for its own sake arose without any consciousness of further implications, without any overt reference to philosophical theory or the systematization of knowledge. It appeared as an axiom which at once recommended itself as part of the general revolutionary tendency of every branch of knowledge to emancipate itself from external control and manage its own concerns. While this idea was gaining ground, a large number of interpretations or "philosophies" of history were launched upon the world, from Germany, France, England, and elsewhere. They were nearly all constructed by philosophers, not by historians; they were consequently conditioned by the nature of the various philosophical systems from which they were generated; and they did a great deal to bring the general idea of a philosophy of history into discredit and create the suspicion that such an idea is illusory. I observe with interest that this Congress, in the Department of Philosophy, assigns a section to the Philosophy of Religion but not to the Philosophy of History. I feel, therefore, the less compunction, that my argument compels me to make some remarks about it here.

I need hardly remind you that the radical defect of all these philosophical reconstructions of history is that the framework is always made *a priori*, with the help of a superficial induction. The principles of development are superimposed upon the phenomena, instead of being given by the phenomena; and the authors of the schemes had no thorough or penetrative knowledge of the facts which they undertook to explain. Bossuet boldly built his theory of universal history on the hardly disguised axiom that mankind was created for the sake of the Church; but nearly all the speculative theories of historical development framed in the nineteenth century, though less crudely subjective, fall into the same kind of fallacy.

Two of the most notable attempts to trace the rational element in the general movement of humanity were those of Hegel and Krause. They are both splendid failures, Hegel's more manifestly so. They are both marked by an insufficient knowledge of facts and details, but in imposing his *a priori* framework Hegel is far more mercilessly Procrustean than Krause. It was the modern period which suffered most painfully through Hegel's attempt to screw his-

tory into his iron bed. His scheme implies that the modern period represents the completion of historical development, is part of the last act in the drama of the human spirit. This implication is preposterous. What we know about the future is that man has an indefinite time in front of him, and it is absurd to suppose that in the course of that time new phases of thought will not be realized, though it is quite impossible for us to predetermine them. This error alone is sufficient to cast suspicion on the whole edifice. For the stages of history, as a revelation of spirit, correspond *ex hypothesi* to the dialectical stages in the logical evolution of the idea; and if Hegel fixes the terminus of the historical evolution at a point immeasurably distant from the true term, it evidently follows that the correspondences which he has established for the preceding stages with stages in the logical evolution must be wholly or partly wrong, and his interpretation breaks down. The keys are in the wrong locks.

Krause's system, which has had considerable influence in Belgium, avoids the absurdity of not allowing for progress in the future, — a consideration which there was no excuse for ignoring, since it had been recognized and emphasized by Condorcet. He divides the whole of human history, including that which is yet to come, into three great periods, — the ages of unity, of variety, and of harmony, — and pronounces that mankind is now in the third and last stage of the second period. This theory, you perceive, has an advantage over Hegel's in that it gives the indefinite future something to do. But, although this Procrustes is more merciful, the Procrustean principle is the same; there is an *a priori* system into which human development has to be constrained. I am not concerned here to criticise the method on which Krause proceeds; I only want to illustrate by two notable examples, that of Hegel who ignores the future, and that of Krause who presumes to draw its horoscope, how the philosophy of history has moved on false lines, through the illusion that it could construct the development of reason in history from any other source than history itself. By the one example we are taught that, in attempting to interpret history, we must remember there is no such thing as finality within measurable distance:

His ego nec metas rerum nec tempora pono;

while the other example warns us that in considering the past it is idle to seek to explain it by any synthesis involving speculations on the inscrutable content of the future.

It is, indeed, curious to note how the authors of the numerous attempts to present a philosophical construction of history, which appeared during the nineteenth century, assume, so naïvely, that their own interpretations are final, and that the ideas which are within the horizon of *their* minds are the ultimate ideas to be sighted

by man, the last ports to be visited in his voyage down the stream of time. It is strange how this childish delusion, this spell of the present, has blinded the profoundest thinkers. Hegel thought that the final form of political constitution was something closely resembling the Prussian state, that the final religion is Christianity, that the final philosophy is his own. This was logical in his case, because it was part of his view that the plenitude of time has come; yet we can have very little doubt that this doctrine was prompted psychologically by what I have called the spell of the present. But even those who were able, in phrase at least, to transcend the present and look forward to indefinite progress, speak and argue nevertheless as if the ideas which are now accessible and within the range of our vision could never be transcended in the course of the progress which they admit. The absurdity of this view is illustrated by reflecting that the ideas with which these writers conjured — such as *humanity, liberty, progress,* in the pregnant meanings which those words now possess — were beyond men's horizon a few centuries before. We must face the fact that our syntheses and interpretations can have only a relative value, and that the still latent ideas which must emerge in the process of the further development of man will introduce new and higher controlling conceptions for the interpretation of the past.

I have pointed out the common error into which philosophies of history have fallen, through not perceiving that in order to lay bare the spiritual process which history represents, we must go to history itself without any *a priori* assumptions or predetermined systems. All that philosophy can do is to assure us that historical experience is a disclosure of the inner nature of spiritual reality. This disclosure is furnished by history and history alone. It follows that it is the historian and not the philosopher who must discover the diamond net; or the philosopher must become an historian if he would do so.

But not only is it necessary to abandon unreservedly the Procrustean principle; the method of approach must also be changed. This is the point to which it has been my particular object to lead up. The interpreter of the movement of history must proceed backward, not forward; he must *start from the modern period.* For a thorough, fully articulated knowledge of the phenomena is essential — not the superficial acquaintance with which speculators like Hegel worked; and such a knowledge is only attainable for the modern period, because here only are the requisite records preserved. Here only can one hope to surprise the secrets of the historical process and achieve a full analysis of the complex movement. The records of ancient and medieval history are starred with lacunae; we are ignorant of whole groups of phenomena, or have but a slight knowledge of other groups; and what we do know must often be seen in

false perspective and receive undue attention on account of the adjacent obscurities. We can survey and attempt syntheses; but syntheses without fully articulated knowledge are no more than vague shots in the direction of a dimly seen object. And the only syntheses possible in such conditions are insignificant generalities, bloodless abstract conceptions, like the ἀμενηνὰ κάρηνα of Homer's world of shades. The interpretation of history that shall be more than a collection of plausible labels must grasp the vital process, perceive the breath and motion, detect the undercurrents, trace the windings, discern the foreshadowings, see the ideas traveling underground, discover how the spiritual forces are poised and aimed, determine how the motives conspire and interact. And it is only for the history of the last three or four hundred years that we possess material for investigating this complicated process.

And it is for the development of the nineteenth century that our position in some respects is most favorable. It is commonly said that recent history cannot be profitably studied, on the ground that we are too near to the events to be able to treat them objectively and see them in the right perspective. Admitting the truth of the objection, recognizing fully that recent events are seen by us "foreshortened in the tract of time," we must nevertheless remember that there is a compensation in proximity which it is disastrous to ignore. For those who are near have opportunities of tracing the hidden moral and intellectual work of an age which subsequent generations cannot reach, because they are not in direct relation. De Tocqueville said: "What contemporaries know better than posterity is the mental movement, the general passions and feelings of the time, whereof they still feel the last shuddering motions (*les derniers frémissements*) in their minds or in their hearts." If this is so, it is one of the most pressing duties to posterity that men in each generation should devote themselves to the scientific study of recent history from this point of view.

We may go further, and declare that, in this light, modern history as a whole possesses a claim on us now, which does not belong either to antiquity or to the Middle Ages. We have ourselves passed so completely beyond the spiritual boundaries of the ancient and medieval worlds that we can hardly suppose that we possess any greater capacity for a sympathetic apprehension of them than our descendants will possess a thousand years hence. Whereas, on the other hand, we may fairly assume that we are in a much better position than such remote posterity for sympathetic appreciation of the movements — the emancipatory movements — of the sixteenth, seventeenth, and eighteenth centuries. It therefore devolves upon us before we have drifted too far away to do what may be done to transmit to future generations the means of appreciating and com-

prehending. In this sense the study of what we call modern history is the most pressing of all.

But I have permitted myself to digress from the argument. I was concerned to show that our only chance of tracing the movement and grasping the principles of universal history is to start with the study of the modern age where our material is relatively full, and proceed regressively. One great mistake of those who have attempted philosophies of history has been that they began at the other end, — not at the beginning, but at whatever point their knowledge happened to reach back to, perhaps in China, perhaps in the Garden of Eden, — and were consequently obliged to adopt a difficult and precarious synthetic method. Precarious, because in passing on from one stage to another there is no guarantee, owing to our fragmentary material, that we have knowledge of all that is significant, and therefore the synthesis which expresses the transition to a higher stage may be vitiated by incompleteness. We may be acquainted only with some of the forces which determine the sequel, and, if we proceed as though we had all those forces in our hands, our conception of the sequel will be inadequate.

On the analytic method, on the contrary, we start from a definite terminus, namely the present, — contingent indeed, but not arbitrary, since it is the only possible limit for the given investigator, — and in the first stage we have all the material, so that it is the fault of the investigation and not the result of accident if the analysis is not exhaustive. The problem then is, having grasped the movement of the ideas and spiritual forces which have revealed themselves in the modern period, to trace, regressively, the processes out of which they evolved, with the help of our records. This, at least, is the ideal to which the interpreter would try to approximate. That, with fragmentary records, the whole historical movement can ever be traced by methods of inference, I do not indeed believe; but assuredly it is only in the period where the records exist that we can first detect the secret of the process or begin to discern the figure on the carpet.

But the question will be asked: Can we define absolutely the position of the modern period in the secular perspective of history? The field of what we call "modern history" has a roughly marked natural boundary at the point where it starts, towards the end of the fifteenth century. We may say this without any prejudice to the doctrine of continuity. But the phrase is used to cover all post-medieval history, and therefore the hither limit is always shifting. For while it is usual to mark off the last thirty or forty years as "contemporary history," as years pass on the beginning of "contemporary history" moves forward, and the end of the modern as distinguished from the contemporary period moves forward too. The

question arises whether this conventional nomenclature is any longer appropriate, whether all post-medieval history can be scientifically classified as a period, with the same right and meaning as the Middle Ages. "Ancient History" is of course a merely conventional and convenient, unscientific term; is this true of "Modern History" also? It may be thought that the answer is affirmative. It may seem probable that the changes which began at the end of the eighteenth century, the great movements of thought which have thrilled the nineteenth century, the implications of the far-reaching vistas of knowledge which have been opened, mark as new and striking a departure as any to which our records go back, and constitute a *Neu-zeit* in the fullest sense of the word; that in the nineteenth as in the sixteenth century man entered into a new domain of ideas; that of the nineteenth as much as of the sixteenth are we justified in saying

Ab integro saeclorum nascitur ordo.

If so, our nomenclature should be altered. The three centuries after Columbus should be called by some other name, such as post-medieval, and "modern" should be appropriated to the period ushered in by the French Revolution and the formation of the American Commonwealth, until in turn a new period shall claim a name which can never be permanently attached. It would follow that in the Historical Department at this Congress, there should be another section; the nineteenth century, the more modern modern period, should have a section to itself. In Germany, a distinction of this kind has been adopted. The sixteenth, seventeenth, and eighteenth centuries are described as *die neuere Zeit;* while the nineteenth is distinguished as *die neueste Zeit.*

Among the notes which form the stamp and signature of this *neueste Zeit* is the new historical interest, if I may say so, which has become prevalent in the world and is itself an historical fact of supreme importance. It is expressed not only in the enormous amount of research that has been done, but in the axiom of "history for its own sake," and also in the attempts to create a philosophy of history. It is a new force set free, which will have its own place in the complex of the driving forces of the world. It is to be taken along with the equally recent development of a consciousness of our relations to future generations, which is practically reflected in a growing sense of duty to posterity. Both facts taken together, the interest in human experience and the interest in human destiny, represent a new sense of the solidarity of humanity, linking past ages and ages to come. In other words, the human mind has begun to rise above the immediate horizon of the circumstances and interests of the present generation, and to realize seriously, not as a mere object of learned curiosity, the significance of the past and the potentialities of the future.

The most familiar of words, *past* and *future*, have become pregnant with significance; they are charged with all the implications of a new perspective.

It is clear that this new sense is inconsistent with the affirmation of Arnold and Seeley that contemporary is superior to preceding history by all the superiority of an end to the means. This doctrine expresses the attitude of the old unregenerate spirit. The theoretical truth which it contains is simply this, that contemporary history represents a more advanced stage than any preceding it, or, in other words, there is a real evolution. But for the same reason it is itself inferior to the development which will succeed it; and if past history is to be described as a means, contemporary history must be equally described as a means, on the same ground. Theoretically, therefore, this teleological argument has no application; it would not become relevant till the end of the process has been reached. But what Arnold and Seeley probably had most in mind was the importance of comprehending the past for the sake of comprehending the present for practical purposes. (This is now so fully understood and recognized that I have not thought it necessary to dwell on it to-day. It is now generally acknowledged, by those whose opinion need be considered, that the practical value of history consists not, as used to be thought, in lessons and examples, but in the fact that it explains the present, and that without it the present, in which we have to act, would be incomprehensible. It is modern history, of course, that is here chiefly concerned. Lord Acton said: "Modern history touches us so nearly, it is so deep a question of life and death, that we are bound to find our own way through it, and to owe our insight to ourselves." I venture to think that Lord Acton, in this characteristic statement, rather strains the note; but the statement concerns, you observe, the practical not the theoretical value of the subject.)

To attempt to define absolutely the significance of modern or recent history in the order of development would be to fall into an error like that for which I criticised Hegel and Krause and others who thought to draw forth Leviathan with a hook. It is much if it can be established, as I think it can, that with the nineteenth century the curtain has risen on a new act in the drama. But we can be more confident in asserting negatives. The ideas and forces which have driven man through the last four hundred years and are driving him now, are not the last words or dooms in the progress of reason. The idea of freedom which the modern world has struggled to realize has been deemed by many the *ultima linea rerum;* but it is difficult to see how or why it should be final, in the sense of not being superseded by the appearance of higher ideas which its realization shall have enabled to emerge. Or again, it is unreasonable to suppose that the idea of nationality which has recently played and still plays a

great rôle, is an end in itself or more than a phase in evolution. We must acquiesce in our incompetence to form any scientific judgment as to the value or position of this stage in the total development.

To state briefly the main thesis of this paper. The answer to the question, "What is the position of modern history in the domain of universal knowledge?" depends in the first instance on our view of the fundamental philosophical question at issue between idealism and naturalism. If we are believers in naturalism, then all history, including modern history, has its sole theoretical value in the function of providing material for the investigation of sociological laws. It must accept a position such as Comte assigns to it. But if we are idealists, if we hold that thought is a presupposition of physical existence and not a function of matter, then history as a disclosure of the evolution of thought has an independent realm of its own and demands a distinct interpretation, to prepare for which is the aim of historical research. The segment of history which we call modern, from the sixteenth century onward, occupies a peculiar place, because here, partly in consequence of the invention of printing, our materials begin to be adequate for a complete analysis. This gives us the theoretical significance of the modern period as an object of study; it is the field in which we may hope to charm from human history the secret of its rational movement, detect its logic, and win a glimpse of a fragment of the pattern on a carpet, of which probably much the greater part is still unwoven.

This Congress is suggestive in many ways, suggestive especially of the distance the world has traveled since 1804 or since 1854. There will be many more of its kind; but this is unique as the first. It is not very bold to predict that historians of the distant future, in tracing the growth of coöperation and tendencies to a federation of human effort, which are one of the transformative influences now affecting mankind, will record this Congress in which we are here met together as a significant point in this particular stage of man's progress toward his unknown destiny.

HISTORICAL SYNTHESIS

BY CHARLES W. COLBY

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When Huxley declared that Spencer's idea of a tragedy was a deduction killed by a fact, he minted a phrase which is not without its application to history. The human mind, prone to spin theories and to generalize from the exceptional case, stands ever in need of such a corrective as is supplied by the record of ancestral experience. Thus it becomes the duty of the historian to go through life with sling in hand and heart steeled to slay the false deduction which is tyrannizing over mankind. Nothing equals the vitality of a lie save the longevity of a legend, and as the deadly facts are sometimes slow to disclose themselves a voluble deduction may for years or generations mislead even the thoughtful. The Hildebrandine scheme of political philosophy which underlies the *Dictatus Papae,* the excommunications of Henry IV and the letter to William the Conqueror, had its day and may still claim the support of a party; but for most of us it must stand ultimately condemned by the weakness of its historical basis. How often during the past century has the groundwork of famous theories, whether political, social, theological, or ethical, been modified, if not destroyed, by the solvent of historical fact. On the 24th of April, 1793, Robespierre, drawing his inspiration from a well-known source, exclaimed: "Kings, aristocrats, tyrants, whosoever they may be, are slaves revolted against the sovereign of the earth, which is the human race, and against the law-maker of the universe, which is nature."[1] If this sentiment strikes an answering chord anywhere at the present day, it can hardly be in the heart of an historian. Nor are the deductions against which historical fact makes war confined to large ideas like Gregory VII's theory of Church and State, or the Jacobin doctrine of social origins. Take, for example, the actual state of the Napoleonic legend which was developed by the French radicals of 1820, and embellished for current purposes under the July Monarchy. Lord Acton went so far as to style Napoleon "the most splendid genius that has appeared on earth,"[2] but the Napoleon of the French radicals in 1820 was a liberal who above all other things loved peace.

[1] *Orators of the French Revolution,* ed. H. Morse Stephens, vol. II, p. 374.
[2] *English Historical Review,* vol. II, p. 603.

Under the circumstances we need feel little surprise when we contemplate the amount of energy which modern historians have devoted to the task of setting their predecessors right. One might almost say that at the dawn of the nineteenth century the criminal law of England required no more revision than did the best books which were to be had on English history. Perhaps more mistakes clustered around the Civil War and the Revolution than around any other subjects, although, as Dr. Johnson observes of Voltaire and Rousseau, it is difficult to settle the proportion of iniquity between Smollett's account of the Revolution and Hume's allusions to the medieval church. Apart from all larger attempts at construction, the critics have had quite enough to do during the last hundred years or so in correcting errors of detail. This kind of occupation is not, and never will be, finished. It is an industry which goes on for the most part quietly, though interrupted now and then by an explosion. Investigators of the higher grade still aspire to set right mistaken notions regarding the defenses at Hastings. The humble beginner is content if he can detect a slip lurking beneath the guarded utterances of Stubbs.

We all like to prove our points, and the more limited their scope the keener seems the anxiety. Yet at times, and especially on international occasions like the present, one's thought is drawn away from the task of rectifying details, and even from the nobler sport of slaying unfounded deductions. According to a dictum of Professor Dicey, "Democracy depends upon the importance attached to the similarities, as surely as aristocracy depends upon the importance attached to the differences, of human nature."[1] Usually we are intellectual aristocrats, thinking of the specialties which divide us and spurring on the hobbies which bear us madly away in the most divergent directions. Here we become democrats (not necessarily red radicals but respectable whiggish democrats) bent on accentuating if only for a moment the things that draw us together. Well would it be for one speaking on such a subject as mine if he could produce from his pocket an eloquent and convincing philosophy of history. When we pause a moment to draw breath, we can overhear the candid comments of those who rate the value of historical studies less highly than we do. I am not referring so much to the cynical detractor like Walpole, with his gibe against historical credibility. I have in mind, rather, the candid friend of philosophical tastes, who is willing to admit that history would furnish a fine theme if only historians could manage to get at the heart of their subject instead of playing with superficial trivialities. Buckle, to whose taste for speculation was added a vast amount of historical knowledge, has expressed this view in a passage too hackneyed for further quotation; and it is

[1] *The Nation*, vol. LXXV, p. 28.

the inveterate empiricism of historical writers that makes Emerson cry out, "I am ashamed to see what a shallow village tale our so-called history is."

The comments of an honest spectator are usually worth something, but despite the present force of the reaction it seems agreed by experts that subjective ideas should be kept in strict quarantine and not permitted to infect the pure, annalistic record. At a recent meeting of the American Historical Association which was held in Philadelphia, Dr. James Sullivan read an excellent paper entitled, "The Antecedents of the Declaration of Independence." Much that he then said I still remember, but what impressed me most was the following reference to the fundamental propositions of the Declaration. "In the public mind of to-day," said Dr. Sullivan, "inalienable rights are those things which we reserve for ourselves and deny to our neighbors." And he proceeded to take this as a crucial instance, illustrating the wide gulf which separates the scholarly world from the general public. "As a matter of fact," he continued, "the world of learning long ago abandoned the state-of-nature theory, with all its corollaries of equality, inalienable rights, and others, but the world at large still seems to be, in respect to such doctrines, back in the eighteenth century." [1] These words were received by the audience with evident appreciation, and one could not but feel a slight shock of surprise at observing the mirth of American citizens (in Philadelphia of all places) when gentle persiflage was thus directed against the preamble of the Declaration. If "inalienable rights" seemed amusing to a congress of American historians meeting in Philadelphia, I am sure that an international congress of historians meeting at St. Louis would be equally amused to hear any one suggest that there exists a basis upon which a philosophy of history can be founded. Lowell once complained of the trouble he found in trying

> "to raise anerithmon gelasma
> With rhymes so hard-hunted they pant with the asthma."

No such difficulty need be encountered in starting the merriment of historians. Mention, with apparent seriousness, "the philosophy of history" and the thing is done. Herder, Fichte, Schelling, Schlegel, Krause, and Hegel have disappeared completely from our ken since the days of Ranke. "Mais où sont les neiges d'antan?" If any individual member of our craft really believes that the philosophy of history is anything more than *flatus vocis*, he had better keep the opinion to himself. Otherwise he may encounter the fate which overtook Nominalists in the age of Roscellinus. But why discuss the subject further? Did not one of the best known and most eminent historians of this hemisphere recently crush a whole host of adversaries when he said that sociology was simply our old foe the philosophy

[1] *Report of the American Historical Association for 1902*, vol. I, pp. 66–67.

of history in disguise? Since international gatherings are designed to promote peace and herald the golden year, one must refrain, in speaking of historical synthesis, from all attempt to present an alleged basis for a philosophy of history. What may be going on at this moment in the metaphysical section we cannot tell, but here the nearest approach to philosophy which one dare make is to suggest that the problem of synthesis is even more pressing than are the difficulties which crowd in from the side of criticism. Should one be asked how this subject is connected with the political history of modern Europe, an answer might be found in the words *a fortiori*. What has to be said regarding historical synthesis is of general application, bearing upon the Greeks and Romans as well as upon the French Revolution and the establishment of the German Empire. For the last four centuries, however, the question grows increasingly complex and important. The multiplication of data, nearness to the event, patriotic prejudice, and other obvious causes combine to render this problem most crucial of all in its relation to modern history.

Indicating a contrast between synthesis and criticism, I expressed the opinion, a moment ago, that the demands made upon us by the latter were on the whole the more urgent and exacting. In historical research and composition so many elements are concerned that one's attitude toward them must, perforce, be tinged by opportunism. How indispensable critical processes are, we all understand, and from the very fullness of this recognition the danger would seem to lie in another direction. It was not always so. We have but to read the controversy which arose over Middleton's *Letter to Dr. Waterland*, followed by the controversy over the same author's *Free Inquiry*, if we would carry ourselves back to days when the claims of criticism were paramount. When we have examined Bishop Zachary Pearce's answer to the *Letter*, and especially the passage on Josephus in his *Reply to the Defence*, we are quite prepared for a passage like this in John Jackson's rejoinder to the *Free Inquiry*: "In what I have examined I have found nothing of real argument or solid literature; but a great deal of very bad reasoning; and what is worse, gross misrepresentations of facts; and a very uncandid and unmanly treatment of learned, honest, and pious men, whom without a shadow of evidence he has treated as enthusiasts, cheats, and forgers; but whom their greatest and most inveterable enemies, Pagans, Jews, and most infamous heretics could never convict of the least fraud, deceit, or bad practice."[1] Middleton died in 1750, but as late as 1829 the *Quarterly Review* was denouncing the "absurd and shallow doctrines of Niebuhr" and attacking the translation of Thirlwall and Hare in language which deserved the answer that Thirlwall gave it. "By the bye," says the reviewer, "we think his last translators, two

[1] Remarks on Dr. Middleton's *Free Inquiry*, London, 1749, p. 58.

clergymen of the Church of England, since they have exercised the right of adding notes to Niebuhr's text whenever they thought they had anything worth hearing to offer, might as well have *remarked*, for the benefit of their young academical readers, on some of the most offensive paragraphs which have appeared since the days of the Philosophical Dictionary. But Niebuhr *is*, what Mr. Wordsworth should not have called Voltaire, 'a pert, *dull* scoffer.'"[1]

Refreshing our memories by an appeal to these and kindred passages, we can sympathize with the pioneers who strove for enlightenment in a time when criticism was equivalent to heresy. That date, however, is long past, and at present it may not be unwise to consider whether the full triumph of critical and comparative methods does not in its turn disclose fresh questions to be faced — or rather old questions to be faced in the light of new conditions. The controlling purpose, one may contend, under which data should be chosen, combined, and presented, is no less a factor now than it was in those long ages before the net of criticism had swept in everything from Ranafer and Khafra to the *Legend of Marcus Whitman* and the *Literary Industries of H. H. Bancroft.* More than two generations have elapsed since Ranke began his career with the *History of the Romance and German Races;* the Ecole des Chartes has been publishing its journal ever since 1839; it was in 1863 that Droysen opened the ninth volume of the *Historische Zeitschrift* with his paper on the "Elevation of History to the Rank of a Science"; and for those who cannot spend their youth in a seminary, the manual of Bernheim or that of Langlois and Seignobos will furnish instruction regarding the rules of the game as it is currently played. The fruits of critical research are untold, or at least one could not attempt to tell them without lapsing into rhetoric. Yet criticism is not everything here below, and utilitarian instinct at its strongest urges the historian to do something with his facts after he has got them.

In taking an abstract term like *synthesis* for the central point of one's discourse, there is every opportunity to wander round in a fog of words, losing one's self and being lost sight of by one's hearers. From a desire to keep closely in touch with the concrete, I shall avoid the use of metaphysical language and limit myself to a few remarks upon the *nœud vital* of historical composition, namely, the personality of the writer. And here what I mean to convey can best be expressed through that familiar story of the artist's reply to a vacant questioner. "Could you tell me, Mr. Opie, how you mix your colors?" "With brains, Sir," is the universal formula of retort to such queries, whenever and wherever they may be asked. Sir James Mackintosh said of Opie, that "had he turned his mind to the study of philosophy

[1] *Quarterly Review*, vol. xxxix, pp. 8–9 (footnote).

he would have been one of the first philosophers of the age," and the above rejoinder lends color to the statement. When under the auspices of the Greeks history entered upon the European phase of its existence it had the character of a fine art, and perhaps some profit can still be gained by recalling this fact. One kind of talent is required to elicit the data; another kind of talent is required when the story comes to be told, whether as plain narrative or with interpretative comment. Fortunate is the man who is gifted in both directions, and though rare, he might be less rare if historians accorded more attention to the synthetic part of their task. As Burke says at the close of the *Reflections:* "When the equipoise of the vessel in which we sail may be endangered by overloading it upon one side, we become desirous of carrying the small weight of our reasons to that which may preserve its equipoise." In our day the idea of scientific truth has received quite its fair share of emphasis, and we are not likely to bring back those pseudo-Thucydidean flourishes of the eighteenth century which provoke the sarcasms of Mr. Wylie. By way of adjusting the equipoise, let us direct our notice to the historian as a writer whose personality need not be effaced and whose *rôle* has only been rendered the greater by the improved quality of the materials which are now within his grasp.

However created, the impression seems prevalent in high quarters that a writer of historical works must be deemed suspect if he permits his text to become associated with the distinctive quality of his own mind. By way of gloss upon this notion, two passages of very different origin may be brought together. One day when Fustel de Coulanges was lecturing, his students broke in with applause. "Do not applaud me," he said; "it is not I who address you; it is history which speaks through me."[1] This anecdote, taken from an obituary notice of Fustel by Gabriel Monod, illustrates the danger to which the modern historian is exposed when he emphasizes overmuch the scientific character of his subject. From what we know of Fustel's disposition we must believe him to have uttered these words in the most sober earnest. They were not a mere rhetorical flourish but an outburst from the soul, showing that with all his personal modesty he had come to consider his own doctrines a portion of absolute truth. Fustel is not, perhaps, a perfect type of the scientific historian, yet he looked upon himself as being a complete and faithful devotee of science. "He had," says M. Monod, "a very lofty idea of history and the duties of an historian. He believed that history is a positive science, and that it is able to lead those who study the text honestly and critically to a certitude of the most scientific kind. He considered that those who have the honor of working at this science should give themselves up to it with absolute

[1] *Revue Historique*, vol. XLI, p. 278.

devotion and disinterestedness, not permitting political views or the promptings of art to enter their thoughts and works."[1] Here is a case where a man of literary talent and imaginative temperament tries to make himself a pure scientist by dint of erudition and honesty. Fustel could not allow that the German invasion of the fifth century had caused any organic changes in the life of Gaul. Writing in the *Revue des Deux Mondes*, under the date 1872, he observes a studied calmness of phrase, but beneath it we can see his scorn for contemporary historians in Germany, who were equally scientific in their pretensions with himself and equally tenacious of their views. I am not trying to blame Fustel in the least or to conceal my genuine admiration of his great talents. He was not, however, what he deemed himself to be, the impassive mouthpiece of history, and his work might have been even better than it is had he taken his functions less seriously.

Beside the rebuke of Fustel to his class let us place an utterance which was made only a few weeks ago by a very eminent thinker and man of action, Mr. John Morley. In this case you will observe that there is no express mention of history, but we shall not need to hunt long before finding the application. During the past summer the University of Edinburgh conferred upon Mr. Morley an honorary degree, and as such gifts are encumbered by the servitude of a speech, he made the required remarks. Toward the close of his address he struck the aspiring note, without which an utterance from his lips would lack its wonted character. As his selected epigraph he urged the undergraduates before him to cultivate that liberty of mind which he called the mark of distinction between the educated and the half-educated man. "I have," he continued, "a great friend whose happy fortune it has been to know some of the most prominent and leading men of his time, and he assures me that of those great and prominent men he does not think he could count more than four who are or were really lovers of truth. Of course we are not complimenting ourselves too much when we say that we are all lovers of truth in a sense; but by lovers of truth I mean something more than the sense in which we are all lovers of truth. I mean men who are free from the imprisonment of formula, tolerably detached from the affairs of party in Church and State, with width of apprehension, power of comprehension, which after all is the true aim of culture."[2] Now the love of truth as thus defined is or should be the badge of the historian. Unfortunately it seems to be rare, since Mr. Morley's friend has discovered it in four cases only among the distinguished men of his generation, and he does not expressly state that any one of the favored few was an historian.

[1] *Revue Historique*, vol. XLI, p. 278.
[2] *The Times*, July 25, 1904.

The general inference which I would seek to draw from the above passages might run somewhat in this wise. The truth-loving and other qualities necessary for the equipment of an ideal scientific historian are extremely rare; so rare, indeed, that most of those who, like Fustel, consider themselves the living voices of historical verity are self-deceived. While they keep within the field of pure chronology all may be well, but when following the instinct of an open mind they would mount to those higher levels where abide the souls of great men, the seeds of great movements, and the mysteries of racial development, they lose contact with what is certain and enter a region where the sole criterion is probability. If one feels this in dealing with individuals, he will feel it still more in dealing with movements or races: and that the careful historian feels it in dealing with individuals may be inferred from Mr. Rose's words concerning Napoleon's policy in 1805. "The question," he says, "has often been asked whether Napoleon seriously intended the invasion of England"; and after a long discussion of this point, he concludes: "But indeed Napoleon is often unfathomable. Herein lies much of the charm of Napoleonic studies. He is at once the Achilles, the Mercury, and the Proteus of the modern world. The ease with which his mind grasped all problems and suddenly concentrated its force on some new plan may well perplex posterity as it dazed his contemporaries."[1] Should the best opinion of scholars ever decide that history means chronology alone, — that is, the determination of particular and isolated facts, — the critical, scientific method might well succeed in dominating this region, unchallenged and secure. Nor would it be a petty realm. But hitherto, in practice if not by exact definition, history has embraced the manifold relations and interdependencies of these facts, some apparently simple but many conjectural and obscure. Conceiving of history under this form, one is emboldened to hazard the opinion that in the synthetic process the writer's personality should not be obliterated, but that it should be present, frankly revealed where necessary, and not covered up from any nervous dread of deposing history from her scientific throne. Then a man like Fustel, scholar and artist in one, would refrain from saying (at any rate if his subject were the origins of feudalism), "It is history which speaks through me"; but he might let it be known in some way that the text of his work was simply an interpretation of what in his judgment and to the best of his knowledge were the essential facts. After one has pushed thoroughness to its limits, exhausted the material available to him, and brought his matured thought to bear upon the results, he must leave the finished product, whether scientific or not, upon the knees of the gods — *anglice* to the mercy of his severest critic, the lapse of time.

[1] *The Life of Napoleon*, by J. H. Rose, vol. I, p. 466.

Have any histories yet been written, apart from works similar to *L'Art de Vérifier les Dates*, which do not contain a distinct deliverance on points where there is room for difference of opinion. It has been said of Ranke that he had the disinterestedness of the dead, and regarding the nature of his standards there can be no manner of doubt. Just before writing this passage I opened the first volume of his *History of England* at random and came upon the following allusion to the Casket Letters. "Who does not know the sonnets and the love-intoxicated letters she is believed to have addressed to him? I would not say that every word of the latter is genuine; through the several translations — from the French original (which is lost) into the Scotch idiom, from this into Latin, and then back into French as we now have them — they may have suffered much alteration; we have no right to lay stress on every expression and interpret it by the light of later events; but in the main they are without doubt genuine; they contain circumstances which no one else could then know and which have since been proved to be true; no human being could have invented them." Here the judicial tone is maintained, and we can see the historian endeavoring dispassionately to state the truth about an intricate and difficult case. Yet were Ranke writing on the Casket Letters at this moment and in the light of the fullest knowledge which can be had, one may doubt whether he would say so positively, "No human being could have invented them."[1] I am not trying to exonerate the Queen or to vindicate the sentiments of the *Revue des Questions Historiques:* but unless I am mistaken a jury of Scottish experts would return a verdict of Not Proven, while Mr. R. S. Rait goes so far as to say in reviewing Mr. Lang's *Mystery of Mary Stuart* for the *English Historical Review:* "The Mystery of Mary Stuart remains a mystery. There *is* a doubt, and while the question remains in suspense the Queen should have the benefit of it."

Were it necessary one might collect a large number of *obiter dicta* from the pages of Ranke, including some passages which assuredly will not stand the test of time. And if the master does not always reach the goal he aimed at, what shall be said of others? At this time of day it is either banal or insulting to praise the erudition of Germany, and in history the great objective of German scholarship is scientific accuracy. Yet virtue itself 'scapes not calumnious strokes, and Droysen, whose essay on the elevation of history to the rank of a science is justly famous, incurs along with others the severe censure of MM. Langlois and Seignobos. In the chapter on exposition which these strict exponents of historical science have written conjointly, occurs an unsparing castigation of the careless vulgarizer. "On the other hand," the text continues, "men whose information

[1] *History of England*, English translation. Clarendon Press, 1875, vol. I, p. 273.

is all that could be desired, whose monographs intended for specialists are full of merit, sometimes show themselves capable, when they write for the public, of grave offenses against scientific method. The Germans are habitual offenders: consider Mommsen, Droysen, Curtius, and Lamprecht. The reason is that these authors, when they address the public, wish to produce an effect upon it. Their desire to make a strong impression leads them to a certain relaxation of scientific rigor, and to the old rejected habits of ancient historiography. These men, scrupulous and minute as they are when they are engaged in establishing details, abandon themselves, in their exposition of general questions, to their natural impulses like the common run of men. They take sides, they censure, they extol; they color, they embellish; they allow themselves to be influenced by personal, patriotic, moral, or metaphysical considerations. And over and above all this they apply themselves, with their several degrees of talent, to the task of producing works of art; in this endeavor those who have no talent make themselves ridiculous, and the talent of those who have any is spoilt by their preoccupation with the effect they wish to produce." [1]

I quote the foregoing strictures, not because they have the interest which belongs to writings of a slightly polemical character, but because the passage makes a sharp distinction between monographs well done and popular histories badly done. The monographs are concerned chiefly with the establishment of particular facts. The popular treatise is designed to give order, connection, and some degree, at least, of meaning to those facts. Perhaps, as MM. Langlois and Seignobos suggest, the Germans are less successful in the latter than in the former field; but even allowing that their performance is open to criticism on the ground of personal and patriotic prejudice, they, like other human beings, cannot exclude convictions and even opinions from histories of this type. There is reason in everything. If a writer, however learned, suffers his judgment to be warped by prejudice of any kind, he will be found out and his learning will not save him. Nevertheless, the historian whose views are something more than prejudices will carry conviction, if his facts are undeniable and his argument seems sound. Nor is this result less likely to be secured in the field of general history than in that of monograph. In his autobiography Darwin calls the *Origin of Species* one long argument, and on analysis it may prove that many a book is good history though decidedly tinged with the author's opinions.

MM. Langlois and Seignobos direct their attention to the shortcomings of German historians, but the *Histoire Générale* itself is not without touches which reveal the presence of personal feeling or

[1] *Introduction to the Study of History* (English translation), pp. 313–314.

opinion. To begin with, a certain predilection for the interests of France may be observed in the scale of the work, and though the general tone is excellent, one now and then sees national pride welling up within the heart of the historian. For example, M. Denis, at the close of his chapter on the Thirty Years' War, introduces a sentence or two which, however natural and justifiable, must impress the reader as being slightly tinged with purple. "In achieving the ruin of imperial authority, the Peace of Westphalia completed the work of Luther and marked the end of a constitutional development which from the fall of the Hohenstaufen tended to transform Germany into a princely oligarchy, and it also prepared for the revival of German nationality which little by little was to group itself around the princes. From the congress of Münster and Osnabrück modern Germany really dates. As at the Capetian epoch, as at the Revolution, the glory of France coincided with the distinct advance of humanity." [1] Here is the note of patriotism. The note of dogmatism is struck by M. Seignobos himself at the close of his text-book on the political history of modern Europe. "The revolution of 1830 was the work of a group of obscure republicans, aided by the blunders of Charles X. The revolution of 1848 was the work of certain democratic agitators, aided by Louis Philippe's sudden lack of nerve. The war of 1870 was the personal work of Bismarck, prepared by Napoleon III's personal policy. For these three unforeseen facts no general cause can be discerned in the intellectual, economic, or political condition of Europe. It was three accidents that determined the political evolution of modern Europe." [2] Without breaking a lance over this particular utterance, it may be pointed out that all such epigrammatic statements about complicated phenomena represent pure opinion, and depend for their value not upon their consonance with absolute truth but upon their inherent power to persuade.

Among English historians Stubbs and Gardiner have the brightest reputation for that kind of impartiality which shines out through the course of a monumental work. Macaulay, Carlyle, Green, and Froude, whatever their other merits, cannot be brought into the comparison at this point; and even though we admit Freeman's character to have survived the onslaughts of Mr. Round, the *Norman Conquest* can hardly, in respect to form, be taken as a model of scientific history. Some people may deem Stubbs dull, but Professor Maitland has told how he first picked up the *Constitutional History* in a London club and read it because he found it interesting.[3]

[1] *Histoire Générale*, vol. v, p. 582.
[2] *Political History of Europe since 1814* (translated by Macvane), p. 847.
[3] *English Historical Review*, vol. xvi, p. 422.
Another passage in Maitland's appreciation of Stubbs (*English Historical Review*, vol. xvi, pp. 417–426) may be quoted as cognate to the main motive of this discussion. "At least there should, so it seems to me, be no doubt about the award that should be made in this journal. The greatness of historians can be

Probably most of us who are here will agree to the justice of this opinion; and to me it seems that the book is attractive not merely because the author is so careful to refrain from making general statements on insufficient grounds, but because there is so much of the wise and temperate man in the appreciation of characters and national tendencies. One would not look in vain for passages where his authority might be called in question, particularly before the Conquest and after the middle of the thirteenth century. The essential thing is that his judgments cannot be dissociated from his temperament and principles, especially where a moral issue arises. The concluding pages of his third volume, with their copious use of analogy, illustration, and tempered eloquence, bring him to the confines of rhetoric, nor does he shrink here or in other writings from letting us see what he really thinks of Puritanism.

As for Gardiner, he is crowned with the bright laurel that belongs to one who has treated fearlessly, candidly, and with unbounded wealth of learning the most controverted period of English history. Still he is by no means a stranger to the methods of the law court and the language of the pulpit. His answer to Father Gerard in the matter of Gunpowder Plot is an argument which, unjustly I think, has been taxed with special pleading; the conclusion to his little volume on the *Thirty Years' War* is aglow with the fire of Macaulay; and he does not hesitate to incorporate in his *History of England* an outburst like this, which is prompted by the undisguised convictions of a Protestant: "The world was to learn that there were men who were ready to suffer and to die, if need be, on behalf of principles more true, and of an order more fruitful of a good and noble life than anything which Ferdinand and Maximilian had found it possible to conceive. From the study of Bacon, from the parsonage of George Herbert, from the pulpit of Baxter, from the prison of Eliot, a light was to break forth, splendid in its multiplicity of color and of brilliancy, which would teach the world to shrink from anarchy and despotism alike, and to intrust the treasure of its moral and intellectual progress to ordered liberty." [1] In a letter to Freeman, J. R. Green expresses admiration of Gardiner, and can quite understand why, striving as he does to banish "loose talk," he should look askance at the influence which the *Short History* might have in

measured along many different standards, and far be it from any one to speak slightingly of the man who, without adding to what was known by the learned, has charmed and delighted and instructed large masses of men. His place may be high, and even the highest, provided that he be honest and reasonably industrious in the search for truth. But such a man will find his reward in many places. Here we have to think first of the augmentation of knowledge — the direct augmentation which takes place when the historian discovers and publishes what has not been known, and the indirect augmentation which takes place when his doings and his method have become a model and an example for other scholars. And here Dr. Stubbs surely stood supreme."

[1] *History of England*, vol. v, p. 169.

bringing it back again.[1] But for "loose talk," interpreting the phrase to mean picturesque and rhetorical language, there surely is nothing in Green which goes beyond this.

Whatever scoffers may urge to the contrary, history has one thing in common with truth, since both are extremely polygonal; and if, as the wizard sang to Bellicent, "truth is this to me and that to thee," the day is probably long hence when our conception of the *summum bonum* in history will be reduced to the dead level of sameness. Had Leibnitz carried his brilliant project a little farther and taught mankind to think in symbols instead of words, he would have rendered history a greater service than he did by writing the *Annals of the House of Brunswick*. Then we should not waste time over definitions and beat the air in the hope of establishing a useful conclusion. Professor Flint is writing a history of the philosophies of history. His task would have been greater still had he called his work a history of the conceptions of history, for many conceptions worth taking note of never crystallized into the polished diamond of a philosophy. Basing our forecast of the future upon the experience of the past, may we not surmise that conceptions of history will be modified in each generation by the expanding consciousness of mankind? At present many of the ablest and most learned historians restrict their efforts to the determination of facts by scientific process and deem it futile to attempt more. Doubtless this contention represents an extremely important point of view. It only remains to ask whether the vista towards coördination is finally and irrevocably closed.

Not long ago Professor Fling, in a thoughtful paper on historical synthesis, discussed the relationship of history and science as it has appeared to writers like Droysen, Rhomberg, Lamprecht, Rickert, Münsterberg, and Xenopol. His own deliverance in the matter is supported by considerations regarding the logic of the historical concept, and may be stated briefly as follows: "If historians and sociologists can agree that both deal with the past of society, but from different points of view; that one looks at it from the point of view of a unique evolution, and the other from the point of view of general facts and laws; that as their ends differ, their methods must differ; that there would be no confusion if we retained the term history for the older point of view and employed the term sociology for the later — if these fundamental points could be agreed upon, the debate would be over." Such is his general conclusion, which is attended also by a corollary: "As long as men seek for knowledge of the unique evolution of their social past, just so long will the historical method be justifiable and the historical synthesis, the synthesis of Thucydides, of Tacitus, of Gibbon, and of Ranke, will

[1] *Letters of John Richard Green*, edited by Leslie Stephen, p. 425.

be scientific, although it will never be the synthesis of the natural sciences." [1]

In echoing Professor Fling's sentiments concerning the worth of the historical classics, I would not for a moment assume that there is in any quarter a disposition to disparage the best work done before 1825 or to deny that it has high merit of some kind. Nor would I approach this subject in a spirit the most faintly resembling controversy. Frankly speaking, I doubt whether academic utterances as to what history is or should be, help us very far forward. We all understand the fundamental value of truthful information, and prize the processes by which alone it can be gained. Likewise we prefer a thoughtful presentation of facts to a shallow one, and good writing to bad. Ranke, with his wonted saneness, has said nearly all there is to say. Referring to the difficulty of writing a continuous national history, he observes: "Who could apply critical research, such as the progress of study now renders necessary, to the mass of materials already collected, without being lost in its immensity? Who again could possess the vivid susceptibility requisite for doing justice to the several epochs, for appreciating the actions, the modes of thought, and the moral standard of each of them, and for understanding their relations to universal history? We must be content in this department as in others if we can but approximate the ideal we set up. The best written histories will be accounted the best." [2]

Is it not fair to describe the state of the case under some such form as this? Many have the kind of capacity which is needed to collect and sift historical facts. On the other hand, the number of those who can turn these facts to any use above mere compilation is relatively small. The conditions are the same elsewhere. Mr. Bryce, for one, has remarked and commented upon them. "Knowledge fossilized in a concrete invention," he says, "or even in a mathematical formula, is a sort of tool ready to every hand. But a method, though serviceable to everybody, becomes eminently fruitful only when wielded by the same kind of original genius as that which made discoveries by the less perfect methods of older days. This is apparent even in inquiries which seem to reside chiefly in collection and computation. Everybody tries nowadays to use statistics. But the people who by means of statistics can throw really fresh and brilliant light on a problem are as few as ever they were." [3]

For few is it reserved to write great histories, whether these be labeled works of science, or of art, or of sociology. And yet one cannot think that study of the past bears its best fruit save where the student has a habit of mind which impels him to consider connections as

[1] *American Historical Review*, vol. IX, pp. 20–22.
[2] *History of England*. English translation (Clarendon Press), vol. I, pp. V, VI.
[3] Helmolt's *History of the World* (English translation), vol. I, p. xlix.

well as events. I imagine that we are all skeptical enough about political prophecy and the formulation of historical laws. Fortunately we can have a synthesis which will illuminate portions of the past and stimulate our thought, without the introduction of scholastic language, the wrangle over definitions, and the restless desire to reach some goal. A few years ago a new historical periodical was being started, and I asked one of its promoters (a scholar whose name is familiar to all present) if the projected magazine would resemble another which I named. "Oh dear, no!" he replied. "No one reads that. We want ours to sell on the news-stands." This was a hopeful aspiration — for a quarterly! Whether or not it has been gratified may possibly be learned by inquiry at the Carnegie Institution. MM. Langlois and Seignobos condemn German historians for trying to impress the public, but what kind of writing comes closer to the educated layman than history, with the exception of pure literature? Here is a perpetual incentive to synthetic effort, and if scholars permit the public to suffer at the hands of second-rate vulgarizers, it may be at the double cost to themselves of duty neglected and faculty untrained.

There is, of course, no recipe for preparing the historical masterpiece which becomes a symbol of national erudition or a glory of the national literature; but in the body of this paper I have tried to emphasize the essential ingredient, namely, the genius of the author. The man who thinks himself so complete a master of historical synthesis that when he opens his lips he is declaring a verity of science, would seem, however learned and gifted, to be working on a false theory. The best historians when they coördinate make errors of omission, statement, judgment, taste, and style, — being human and using the fluid vehicle of human thought. Yet is this a reason why one should attempt to efface himself or keep back his mature opinions, in the hope that by so doing he shall more nearly approximate absolute truth? This query is not intended to furnish a loophole for the extenuation of prejudice or the encouragement of "loose talk." It is suggested by the practice of historians like Ranke, Stubbs, and Gardiner, whose identity can be discerned in their works and whose works derive value from the presence of that identity. It is the purest truism that the historical point of view shifts from age to age, and that as regards innumerable questions relating to the past it may be said *quot homines tot sententiae*. None the less each generation demands its own synthesis and exacts the best attainable. One should read what Merlin says to Vivien about fame if he feels grieved at knowing how certainly his book will perish unless preserved by the force of its ideas or the beauty of its form. Still it may be serviceable while it lasts.

In no department of history is the problem of synthesis more

urgent than in that of modern politics, where the data are overwhelming and one's judgment is apt to be influenced either by patriotic instinct or social theory.

A single word in conclusion. Lord Acton praises robust impartiality, and I am following a famous precedent of Newman when I state the case against myself as strongly as possible. The one topic which runs through the foregoing remarks is the personal element in historical synthesis, together with the bearing of the author's personality upon the scientific character of his work. Professor Bury said last year at Cambridge: "When the ultimate history of Germany in the nineteenth century comes to be written, it will differ widely from Treitschke's work, but that brilliant book can never cease to be a characteristic document of its epoch."[1] One goes considerably past this point in suggesting that our sense of historical truth may be deepened by familiarity with Michelet, Quinet, Macaulay, and Green. I hesitate only at the name of Froude.

[1] *The Science of History*, p. 34.

SECTION E — HISTORY OF AMERICA

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(*Hall* 1, *September* 24, 10 *a. m.*)

CHAIRMAN: DR. JAMES SCHOULER, Boston.
SPEAKERS: PROFESSOR EDWARD G. BOURNE, Yale University.
PROFESSOR FREDERIC J. TURNER, University of Wisconsin.
SECRETARY: PROFESSOR EVARTS B. GREENE, University of Illinois.

THE Section of History of America was presided over by Dr. James Schouler, of Boston, who gave an interesting opening address, in which the conditions under which the early settlement of the Mississippi Valley took place, and the growth of the two young cities of New Orleans and St. Louis through the colonial and ante-bellum struggles, was contrasted with present conditions, where the modern St. Louis, the solid and substantial municipality, ranking among the foremost of the cities of the New World, gathered within its borders visitors and scholars from every nation in the world. The Chairman then commented upon the influence of the French in the Mississippi Valley and the changes which followed the purchase of the Louisiana territory by the United States. "This vast Louisiana annexation, so significant for our high mission on this continent, came suddenly and unlooked for, like the New World's discovery by Columbus three centuries or more earlier. It did not come as the gradual fruition of ideas and experience, like our Revolution, our Monroe Doctrine, or the great civil conflict of 1861. To a federo-national Union, but lately put in practical operation under its constitutional scheme of government, and content with its existing domain, it was like the unexpected lifting of a curtain which disclosed new possessions toward the Rocky Mountains wholly unlooked for. To a young and aspiring people all this came as a revelation, the harbinger of a new and grander destiny." Concluding, the speaker paid an eloquent tribute to Napoleon, Marbois, Livingston, Monroe, and Jefferson, the great actors in the international drama.

THE RELATION OF AMERICAN HISTORY TO OTHER FIELDS OF HISTORICAL STUDY

BY EDWARD GAYLORD BOURNE

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Ladies and Gentlemen, — The subject assigned for the second paper this morning is the Relation of American History to Other Fields of Historical Study, and the officers of the Congress had most appropriately selected Professor Hart of Harvard University to discuss this theme. That he has found it impracticable to be here owing to a pressure of other work is to be regretted for many reasons. It was, indeed, most fitting that the institution which was the pioneer in this country in developing systematic historical studies as a part of its curriculum, and which is still the leader in that work, should be represented at this gathering; nor was it less suitable that the man to represent Harvard and the study of American history should be the one upon whom as an organizer of historical labors has fallen the mantle of Justin Winsor.

In our common usage, the content of the term American history embraces the history of the discovery of the New World, a most cursory glance at the Spanish Conquest, the colonization of the eastern coast by the English, the American Revolution, and the political history of the United States. Such a restriction of meaning is a natural outgrowth of circumstances in this country.

In this place, however, near the centre of the continent first explored by the Spaniards, on the great river discovered by De Soto, and not so very many hours' ride from a point reached by Coronado from the shores of the Pacific over three hundred and sixty years ago, so narrow a construction of American history may rightly give way to one which assigns to the Spanish American world a position more truly in accord with its real historical significance in the history of the race. It is the relation of American history in this broader sense, the history of the activities and achievements of Europeans in the New World, to the history of Europe and the history of the United States, to which I invite your attention.

In reflecting upon this subject, my thoughts have grouped themselves around four general inquiries: What should be the attitude of the student of European history to American history? what does American history contribute to the interpretation of European history? in what ways has America affected the development of European life? and, lastly, what advantages may be derived in the United States and in Europe from a more thorough investigation and a more general study of the history of Spanish America?

In regard to the first part of my subject, the proper attitude of students of European history toward American history, I wish to urge a more general recognition of American history as an integral part of the history of the Western European peoples; in other words, that the history of Spain, France, and England should embrace the history of the Spanish, French, and English communities in the New World as a natural and essential part of the whole and not as a mere episode that may be neglected. In the study and writing of English history this point of view has been more adequately realized than in the case of France and Spain. The considerations that would be urged to prove the essential unity of the history of the English on both sides of the sea are familiar to all students, and need not be recapitulated. The case of France I shall pass by, in order to illustrate that of Spain and Spanish America more fully.

It is a not uncommon experience, although notable exceptions exist, to find in narrative histories of Spain her interests in the New World treated incidentally, if at all, rather than regarded as an integral element of profound importance in the national life. Among recent examples of this procedure, one will suffice for illustration. In Martin Hume's *Spain, its Greatness and Decay*, in the Cambridge Historical Series, there are in the period 1555–1788, covered by Major Hume's part of the work, not two pages devoted to the Spanish possessions beyond the sea. Such a narrow, territorial view is devoid of any philosophical perspective, and is a veritable impoverishment of history. In the light of general history, the Spanish conquest of America is the greatest, the most far-reaching in its consequences, of all the achievements in the life of the nation. It is the single event in Spanish history that made Spain a world power, and raised her for a time to a place beside Rome as the mistress of a world and the source of the moral, religious, and intellectual culture of a continent. To write the history of Spain and to leave out the history of Spanish America is like writing the history of Rome and confining one's view to the Italian peninsula. The power of Spain has lapsed and most of her former over-sea possessions are independent states, but whatever becomes of her relative position in Europe, her great contribution to the world's history is certain to rise in historical importance with the passage of time.

I am aware that these assertions will surprise some and perhaps be dismissed by others as extravagant. I propose, however, to elaborate them somewhat, to bring home perhaps more effectively my point of the essential oneness of American and Western European history.

What, in fact, did Spain attempt in the New World and what did she accomplish? She undertook the magnificent if impossible task of lifting a whole race numbering millions into the sphere of European thought, life, and religion. Beside such an enterprise the continental wars of Spain become struggles of transitory interest. But I am reminded that she failed. Such is the ready verdict that is pronounced in accordance with prevalent opinion. But even if the attempt was in some degree a failure, it was a failure after the fashion of the failure of Alexander the Great to establish a permanent Asiatic Empire, a failure that has left an ineffaceable impress on succeeding ages.

Yet the conception was grand, and the effort to realize it called forth the best that was in the men who labored either consciously or unconsciously for its accomplishment. Like all great events in human history it has its dark sides, and unfortunately these dark sides, through the influence of national jealousy and religious prejudice, have commonly been thrust into the foreground by non-Spanish writers.

The great permanent fact remains, however, after all qualifications, that during the colonial period the language, the religion, the culture, and the political institutions of Castile were transplanted over an area twenty times as great as that of the parent state. That this culture and religion seem to the English Protestant inferior to his own is natural; but while that opinion accounts for some of the prevalent disparagement of the work of Spain in America, its truth or falsity is not relevant to the present question. The essential point is that, outside of the fields of art and literature, the great contributions that Spain made to human progress in the sixteenth and seventeenth centuries were made in America. In such contributions to the stock of knowledge as are derived from observation in distinction from those obtained by speculative thought, she far surpassed France and England. Immense additions to geography, to linguistics, to anthropology, flowed from the activities of her explorers and scholars. Nor were the additions to the national literature that took their rise in the New World slight accessions to the general body of literature informed with the spirit of heroic action. The dispatches of Cortés, the *True History* of Bernal Diaz, may fairly claim consideration beside Cæsar's *Commentaries*. Nor can one read the story of De Soto's march, as told by the Gentlemen of Elvas or Rodrigo Ranjel in the pages of Oviedo, without continually

recalling the classic narrative of the retreat of the ten thousand Greeks from Cunaxa to the Euxine.

Enough has been said, perhaps, to raise a presumption for regarding the history of Spanish America as an integral part of the history of Spain, but its importance for the student of Spanish history does not end here. The work of Spain in the New World, defective as it was and adulterated with selfish aims, offered an extraordinary field for the display of national and individual character. The modern world can have little sympathy with the controlling objects of Spanish policy in European politics in the second half of the sixteenth century. Philip II in Spain seems to be putting forth herculean efforts to stay human progress. In the Indies he shows a fairer figure. The colonial legislation of his reign, whatever its defects, reveals a profound and humane interest in the civilization of his over-sea dominions. It was one thing to try to confine Europe to the intellectual bounds of the Middle Ages and quite another to raise primitive America to that level. The long arm of the king was stretched out to protect the weak and the helpless from oppression and from error. It did not always do it, but the honor of the effort should not be withheld. The contrast between Philip II as ruler of the Netherlands and the Philip II who was lord of the Indies may be paralleled by the contrast between the Duke of Alva and Hernando Cortés. The conqueror of Mexico is the more universally known of the two, but the name of no Spanish general of the sixteenth century is more familiar in England and America than that of Alva. That Alva should be popularly considered as a type of Spanish character, and that he should occupy a larger place in histories of the Spanish people than Cortés, will seem unfortunate, and unjust in exact proportion as the varied greatness of Cortés's career is appreciated. How one-sided, then, is a national history which finds no adequate recognition for the nation's greatest achievements just because the field of their accomplishment was beyond the sea!

If these considerations in regard to the history of Spain and of Spanish America are well taken, the essential oneness of American and Western European history may be granted at least the status of a fair presumption, and I may pass to the next line of inquiry, What does American history contribute to the interpretation of European history?

The occupation of the New World by the divergent methods of Spanish and English colonial policy repeated processes of profound importance in the history of civilization in regard to which we have comparatively little evidence. The migration of the English to America was like the diffusion of the Greeks to their colonies, and not a few of the distinctive features of American life and temperament that have been noted by foreign observers were equally characteristic

of the Greek colonial societies in Sicily and Italy: the pride in big things; the fondness for the florid in literature, art, and oratory; the absorption in material interests; the self-confidence and the boastfulness.

The new conditions facing these English on the frontiers of their settlements, in the conquest from nature of a home for civilized man, compelled a readjustment of life to its surroundings, a simple and elastic organization of society in which the earlier life of Europe was lived over again. As time went on, the frontier was pushed further out, and in the older settlements society became more complex and conventional, approaching the stability of the mother country. The thought is a familiar one that on the frontier we have been able to recover the conditions of colonial history, and in recovering these conditions breathe again its atmosphere. America, then, has offered the student the singular opportunity of observing successive periods of historical and social development existing almost side by side, so that one could lift the veil of the past by going west. This thought, which has been so richly developed and illustrated by Professor Turner,[1] was first fully realized, so far as I know, by that acute Frenchman Talleyrand when sojourning in America. I shall take the liberty to quote his observations, on the chance of contributing to the history of one of the most fertile and instructive contributions ever made to the interpretation of American history. In his memoir on *The Commercial Relations of the United States with England*, read before the Academy of Moral and Political Sciences, March 25, 1797, he says:

"Let us look at these populous cities, full of Englishmen, Germans, Irishmen, and Dutchmen, and also of the native inhabitants; these remote hamlets, so far from one another; these vast untilled stretches of country, traversed rather than lived in by men who have no settled home; what common tie is there to bind together what is so unlike? It is a novel sight for the traveler who, starting from a leading town where the social order is matured and settled, passes over in succession all the stages of civilization and industry as they descend until in a very few days he comes to the crude and shapeless cabin built of freshly felled trees. Such a journey is a kind of practical analysis and living demonstration of the growth of peoples and of states. One starts from a highly complex total and reaches the simplest elements. Day by day one after another of those inventions which our multiplying wants have made necessary disappears, and one seems to be traveling backward in the history of the progress of the human mind."[2]

[1] In his *Significance of the Frontier in American History*, State Historical Society of Wisconsin, 1894, and other papers.

[2] *Mémoire sur les relations commerciales des Etats-Unis avec l'Angleterre; Mé-*

Other ways in which in American history the processes of the remote past have been reproduced can be studied in the history of Spanish America, where the conquest of organized societies by alien invaders and the bringing in of a new civilization help us to visualize the process by which Africa became Roman or Syria Greek. Still again the Spanish missions, which from California to Paraguay pushed out among the wild Indians and prepared them for civilized life, will help us to see more clearly the processes by which Christianity made its way slowly into the recesses of Germanic and Slavonic heathenism.

There is still another way in which the American colonial communities offer instruction to the student of European history. By their detachment from the main currents of progress they formed, as it were, eddies in which were preserved, still in vigorous life, much that had quite disappeared in more progressive centres, and in this respect they may be said to serve as a kind of historical museum.

The rigorous sifting of emigration from Spain and its prohibition from other countries, coupled with a close censorship of the press, preserved in Spanish America relatively undisturbed the thought, the life, and the manners of Spain just as she emerged from the Middle Ages. Nearly forty years after Luther posted his theses the name Lutheran conveyed no meaning to the people of Mexico. The first *auto da fé* in that city in 1556 aroused the greatest curiosity, and the English merchant Tomson reported that "there were that came one hundredth mile off, to see the said Auto (as they call it), for that there were never none before, that had done the like in the said country, nor could not tell what Lutherans were, nor what it meant; for that they never heard of any such thing before."[1] The effects of a similar policy survive to the present day in French Canada, where one can still observe the piety of pre-Reformation Europe.

In like manner, Puritanism dominated New England over a century after its sway was broken in the mother country. The English traveler who came to Boston in 1692 not only crossed the Atlantic but he went back in time a half a century. Such a tragedy as the witchcraft trials would have been impossible in England in 1692, although in perfect accord with the spirit and beliefs of the time of the Long Parliament and the Commonwealth. In fact, the good and evil of English Puritanism are nowhere so marked as in New England. There it was segregated, dominant, and lived out its life.

I proposed as the third subdivision of my subject to indicate some of the ways in which America has affected European life by reaction.

moires de l'Institut National des Sciences et Arts: Sciences Morales et Politiques, Paris, An VII, t. II, p. 100.

[1] Hakluyt, *Voyages* (Goldsmid's ed.), XIV, 146.

In the ample scope of the New World the dominant currents of national life found an outlet for a less confined flow, and tendencies restrained or impeded at home from free action were released. The Spanish and French colonial establishments were founded at a time when the Crown was aiming to extend and systematize its powers, and in the New World, unhampered by traditions and usages, it became all powerful. The tendency to absolutism at home was effectively reinforced by the exercise of it in the dependencies. England, on the other hand, began the continuous occupation of America when the current was in the opposite direction and the tide was slowly rising against the royal authority, and here again the national drift was accelerated. The large measure of local liberties enjoyed by the English colonies, the free migration of sects, were quite as much the result of the actual condition of English politics at the time as of preconceived convictions. Settled under these circumstances and left mainly to themselves, the colonies became the field for working out social experiments which would have been impossible in Europe, and whose successful issue has profoundly influenced all after-life.

The most signal instance of this is afforded by the history of religious toleration. In the sixteenth and seventeenth centuries it was a widespread and deeply rooted opinion that religious liberty would undermine society. The social dangers of free thought far outweighed what seem to many to-day the economic perils of free trade. That they were real dangers seemed to be unhappily proved by the aberrations of the Reformation in Europe. If abstract reasoning makes little headway to-day in the matter of securing free trade, we may imagine how impotent arguments in favor of free thought must have been. The risks of failure were too great for the experiment to be tried. In America, however, an opportunity was offered through the institution of the proprietary colonies for a thorough trial, which demonstrated on a considerable scale the safety and advantage of a larger measure of religious liberty. For a colonial proprietor or company to derive any profit, his lands must be sold or rented. To get people was the first need, and the strongest inducements must be offered. In the seventeenth century the prospect of religious freedom made a powerful appeal both in England and Germany. The experiment was first tried by Lord Baltimore in Maryland, and its demonstrated success was followed by its adoption by the proprietors of the Carolinas and Jerseys for utilitarian reasons. The harmlessness and advantages of religious toleration were effectively demonstrated in Colonial America, principally in the proprietary colonies. It spread from these till it became characteristic of the United States, and from that vantage-ground so imposing an example of its benefits, powerfully contributed to its adoption

throughout Western Europe. Who can affirm that religious liberty with its enormous increment to ordinary human happiness could have been attained even in the twentieth century, without the lesson of the experiments in Maryland and Rhode Island, the Carolinas, the Jerseys, New York and Pennsylvania?

Still again, in America the theories of Locke seemed to explain the facts of society, and became the people's political creed. Incorporated in the Declaration of Independence and the State Bills of Rights, these principles exerted an infinitely greater force upon France, and through France upon Europe and South America, than could by any possibility have flowed directly from the *Two Essays on Government.* It is needless here to expatiate upon so familiar a topic as the rise of democracy in America and its diffusion from these shores, or upon the development of written constitutions and their spread over the world, after the most interesting contributions of Borgeaud to those subjects.

Passing now to my concluding thought, I shall try to point out certain advantages to be derived from a more adequate study of the history of Spanish America.

Our colonial history in the past has too rarely emerged from a narrow provincialism, and even now it often tends to sink to ancestor worship. If a departure was made from the narrow track of colonial annals, it generally consisted in conventional comments on the Spanish cruelties and thirst for gold and the superior wisdom and natural capacity of the English race for colonization, with little or no attempt at discriminating comparison between the two types of colonial enterprise.

More broadly conceived, the study of the European colonization of America becomes the investigation of one of the great instances of the transmission of culture in human history, that process by which the social, intellectual, and religious acquisitions of one people are transmitted or imposed upon another, which is thereby lifted to a higher stage of civilization. The conquests of Alexander spread Greek culture far beyond the boundaries of Greek colonization; through the expansion of Rome the science of Greece, the jurisprudence of Rome, and the Christian religion became the common possession of the ancient world; through the Norman conquest England was brought into intimate political and social relations with the Continent and shared more fully the heritage of Rome. At the time of the Renaissance Italy was the teacher of Europe in literature, art, politics, and manners; and the vivifying influences flowing from that country fertilized the intellectual soil of Germany, France, and England. During the reign of Louis XIV, France, in turn, became the arbiter of manners and set the fashion for literary and artistic effort. In the early eighteenth century the stream set in

from England, when the results of the Spanish Succession War had raised her to the position of the first power in Europe, and in France in particular keen curiosity was aroused in English thought and literature.

The American Revolution in a measure shifted the centre of interest across the Atlantic, and American political ideas and methods became a powerful leaven in France, where the French Revolution gave them a universal hearing and sent forth transforming influences in every direction. Each one of these shifting currents of cultural influences constitutes a rich field of study. The analysis of its parts, the processes by which its work was done, the relative degree of permanence of the results, all these constitute fascinating problems for the historian.

If we approach American history from this point of view and make it the study of the transmission of the culture of Western Europe to a new and larger field of development, we find ourselves engaged in the investigation of a most momentous movement in the history of civilization, truly comparable to Alexander's Asiatic empire and to Rome's African and Western European dominion. For the youthful student or for the maturer investigator such a comparative study of the Spanish, French, and English colonization is rich in instruction. It will not only broaden his conceptions of American history but throw a new light on the history of Europe.

There are few fields better adapted for the comparative study of the spirit, the capacities, and the character of these great peoples; nor is it easy to find one where the economic and the human factors which shaped the course of history can be more easily segregated and estimated. Such a study calls first for a survey of the economic and social conditions of the mother country, for a clear grasp of what it aimed to do, and of the physical conditions in the New World which worked for or against those objects. Yet a word of caution is to be uttered against beginning with the comparison of New Spain and Massachusetts, for almost all the conditions determining the character of these communities were very different. Far more suitable is a comparison of New Spain and British India, for there you have two imperial systems imposed upon a mass of native populations, and a certain broad similarity at the start. If it is once realized that British India and not Massachusetts is to be compared with the vice-royalties of New Spain and of Peru, the emptiness of many a generalization about the Spanish and English colonial systems is apparent. The proper physical starting-point for such a comparative study is the West Indies. In the West Indies the Spanish, French, and English met on equal grounds, and the comparison between Cuba, Hayti, and Jamaica is sound and instructive. It is a fruitful inquiry to examine how these three peoples

managed the problems of a plantation colony with slave labor; nor is it less interesting to compare the results of their respective policies since the abolition of slavery. A comparison between the respective slave codes of the Spanish, French, and the English colonies is somewhat disconcerting to the student of English blood, whose knowledge of Spanish policy has been colored by some echo of Las Casas' denunciations of the early *conquistadores*. If the comparison is extended to the criminal legislation in force in the colonies of these nations, one is again compelled to acknowledge that whatever merits are accorded to the English system superior humaneness is not one of them.

After such an introductory study we may appropriately compare some phases of Mexico with New England, always keeping in mind, however, in the case of Mexico, the influence of a climate like the Rocky Mountain Plateau, of the rich stores of the precious metals, and of the preservation of the native stocks.

If after this comparison we apply the same process to the history of La Plata region and of the Mississippi Valley, certain things stand out clearly which may be briefly noted. The stupendous economic development of these vast agricultural regions has been possible only since the application of steam to industry and transportation. This great factor which has revolutionized the relative advantages of Argentina and Peru, and enabled Buenos Ayres to become the greatest city in the Spanish American world, has in the same way enormously increased the disparities between Mexico and the United States. A comparison of these two communities before the entrance of this factor shows that in more than one respect New Spain was in advance of New England. This is true in regard to the prosecution of higher scientific studies, the establishment of the institutions of charity, libraries, art, and architecture: in a word, in those features characteristic of the life of a wealthy community.

I have referred to the Spanish treatment of inferior or dependent races, and intimated that it compares favorably as a whole with the contemporary treatment accorded to such dependents by the English colonists. The belief, of course, is widely prevalent that the story of Spanish Indian policy was merely the tragedy of devastation; but that view is profoundly mistaken. Its origin is found in the curious fact that national jealousies of Spain three centuries and more ago gave an enormous circulation in the various languages of Western Europe to the impassioned appeals of Las Casas for the protection of the natives. To depict the Indian policy of Spain from the pages of Las Casas would be like drawing the history of Southern slavery from the columns of the *Liberator* and multiplying the instances by ten. The Indians owed much to Las Casas and history owes him much, but he apparently felt that boundless exaggeration

in a righteous cause could do no harm and might do good. If we take the confidential report of Juan and Ulloa to the King of Spain in the eighteenth century as to conditions in Peru,[1] we find that, dark as they were, they were almost bright as compared with what appear to be to-day the conditions in the Congo State.

It is no doubt hazardous in an historical paper to touch upon so delicate a subject as the race question, but I will venture a few words upon its broader aspects.

The race question involves not only the relations between the whites and the colored in our Southern states; it confronts us in the Philippines and Porto Rico. In other aspects it is and will be one of the perennial and absorbing problems in the development of Africa. For the consideration, not to say settlement, of a question so complicated and so involved in prejudice and passion and wrong, no light or teaching that history affords should be neglected. These questions were first faced by the Spaniards of all modern Europeans, and in the four hundred years' history of Spanish America there is a wealth of human experience in the contact of races that may be drawn upon for warning or instruction or possibly for reassurance.

If history has lessons for the present, the history of Spanish America assuredly deserves an immensely more careful study than it has yet received. If the study of that history is prosecuted with scientific detachment, penetrating discrimination, and generous liberality of mind, — that freedom from the distorting influences of race pride and religious prepossession, — it will enrich the history of Spain and broaden the study of our own colonial history, and contribute to the intelligent appreciation of the race problems of the twentieth century.

In this brief essay upon a subject so comprehensive as the relation of American history to other fields of historical study, I have found it hardly practicable to do more than to remind the student of European civilization that his territory extends across the Atlantic, and is not bounded by it, and that the forces and tendencies, the people and the institutions with whose development he is occupied, have a life over-seas, distinct but not detached from the life in the Old World, and one with whose powerful reactions on the parent civilization he must reckon; and, lastly, I have ventured to advocate a broader treatment of the history of European colonization in the New World, which will accord to the work of Spain a more appreciative recognition, and which may not be without interest and value to us, now that we have undertaken to shape the history of millions of people whose earlier acquisitions of European culture came through Spain, or to those European nations which have the problem of Africa on their hands.

[1] *Noticias Secretas de America, etc.* Sacadas á luz por Don David Barry. London, 1826.

PROBLEMS IN AMERICAN HISTORY

BY FREDERICK JACKSON TURNER

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A catalogue of specific problems which await solution in American history is, I am sure, not expected. Such a list would be altogether too large for the limits assigned to this paper, even if it were a desirable undertaking in itself. I prefer to discuss some larger lines of reconstruction of United States history, some points of view from which it may be approached, in the belief that such an estimate may be of service in presenting tests for determining the relative importance of our problems and in bringing into view some neglected fields of study and neglected methods of investigation.

In many ways the problems of American history differ from those of Old World history. The documents are, for the most part, recent, and exist in comparative abundance, although scattered and incompletely collected. Our problems with respect to material are therefore not primarily those of the technique of verification and criticism of scanty documents, but are chiefly those of garnering the scattered material, printed and written; making bibliographies and indexes; and, in general, rendering available for historical workers the sources for understanding our development. The American Historical Association, through its various committees, the Library of Congress, the Carnegie Institution, and other agencies have already inaugurated important work in finding and listing archives and manuscripts. But very much remains to be done in these respects, for material that would be of inestimable service to the historian is daily disappearing, and the existing material is inadequately known and used. The lack of systematic bibliographies of the documents in the various states of the Union, in the national archives and libraries, and in the foreign countries with which we have come in contact, or from which we have derived our origins, is much to be regretted. Comparatively moderate expenditures by historical societies and by the state and national governments to perfect their documentary collections and to make them known,

would revolutionize our study and obviate the necessity of rewriting a great mass of our history. We are now using incomplete material when rich stores of documents casting new light upon our problems remain. The American historian is, I think, continually impressed with the unwisdom of reliance upon a partial collection of documents, although they may be examined with the minute and critical methods of the trained historical critic, when an abundance of material exists. In illustration I may suggest that a large part of our early diplomatic history has been written from American printed material without the use of the archives of England, France, and Spain, and that speculation has too frequently taken the place of discussion of evidence actually in existence. This problem of materials is presented also in the neglect of our growing and practical people — more interested in making than in preserving history — to accumulate the records of its developments. In how few libraries are to be found complete collections of the early session laws of the various states, and particularly those of the group west of the Alleghanies! Indeed, how few of these states have themselves collected complete sets of their own public documents and newspapers. A whole era is thus becoming increasingly difficult to understand and to record. These problems of the preservation and organization of material are among the most pressing. Traveling missionaries of history who should explore the South and West, for example, listing and copying or bringing into secure and accessible libraries the materials in the form of newspapers, pamphlets, journals, correspondence, business records, etc., would do a work that posterity would recognize with gratitude.

Passing from this preliminary problem of the accumulation and listing of material, I desire next to raise the question, What is the special significance of American history? This should afford a test for determining the grand strategy of an attack upon its fundamental problems.

The especial contributions which students of American history are capable of making to the study of history in general are determined, it seems to me, by the peculiar importance of American history for understanding the processes of social development. Here we have a vast continent, originally a wilderness, at first very sparsely occupied by primitive peoples, opened by discovery to settlement by Europeans, who carry their institutions and ideas from the Old World to America. They are compelled to adjust old institutions to their new environment; to create new institutions to meet the new conditions; to evolve new ideas of life and new ethnic and social types by contact under these conditions; to rise steadily through successive stages of economic, political, and social development to a highly organized civilization; to become themselves

colonists of new wilderness areas beyond the first spheres of settlement; to deal again with the primitive peoples at their borders; in short, continuously to develop, almost under the actual observation of the present day, those social and industrial stages which, in the Old World, lie remote from the historian and can only be faintly understood by scanty records.[1] The factor of time in American history is insignificant when compared with the factors of space and social evolution. Loria has insisted that colonial society exhibits in social development material comparable in the study of society to that brought into view for the geologist's inspection by the upheavals of the earth's crust. These have elevated deep-lying strata of geological formations, so that it is possible from them to read the earlier pages of the history of the earth. But the idea is incompletely stated in this form, for the whole period of American history exhibits recurrences of the colonial society, modified by different frontier physiographic conditions, and by the character and intensity of industrial life of the society that throws off these new colonies. The process is still going on in those northern areas of prairies and plains in Canada, where we may pass, by railroad, from the youthful but highly organized manufacturing cities of the more densely peopled and still developing regions, through regions of increasingly scanty and primitive agricultural occupation, out to the waste of foothills, where the trail of the buffalo seams the hillside, reaching to the far horizon line and showing the road which civilization will rapidly follow. It may frankly be conceded that the differences between the processes of social construction in Europe and in America are at least as important as the resemblances and analogies. But after all limitations are made, it remains true that the history of America offers a rich new field for the scientific study of social development, taken in the largest sense of the phrase.

The point which I wish to make, therefore, is that it is important to conceive of American history, first of all, as peculiarly rich in problems arising from the study of the evolution of society. Henry Adams has stated the matter in a somewhat less inclusive form in these words: "The scientific interest of American history centred in national character, and in the workings of a society destined to become vast, in which individuals were important chiefly as types. Although this kind of interest was different from that of European history, it was at least as important to the world. Should history ever become a true science, it must expect to establish its laws, not from the complicated story of rival European nationalities, but from the methodical evolution of a great democracy. North America

[1] Discussed by the writer under the title, "Significance of the Frontier in American History," in the *Fifth Year-Book of the National Herbart Society*, and in *Report* of American Historical Association, 1893, p. 197.

was the most favorable field on the globe for the spread of a society so large, uniform, and isolated as to answer the purposes of science."

It is safe to say that the problems most important for consideration by historians of America are not those of the narrative of events or of the personality of leaders, but, rather, those which arise when American history is viewed as the record of the development of society in a wilderness environment; of the transformation of this society as it arose to higher cultural stages; of the spreading of it into new wildernesses by extension across the continent. In other words, we have to deal with the formation and expansion of the American people, the composition of the population, their institutions, their economic life, and their fundamental assumptions — what we may call the American spirit — and the relation of these to the different periods and conditions of American history.

If, then, the all-embracing problem in our history is the description and explanation of the progress of this society, at once developing and expanding, we shall find that within it are contained a multitude of subordinate problems. First, let us consider the phenomenon of our expanding society in reference to the fact that the vast spaces over which this forming people have spread are themselves a complex of physiographic sections. American sectionalism has been very inadequately dealt with by our historians. Impressed by the artificial political boundary lines of states, they have almost entirely given their attention either to national or to state history, or to the broad division of North and South, overlooking the fact that there are several natural, economic, and social sections that are fundamental in American historical development. As population extended itself, it flowed into various physiographic provinces, some of them comparable in size and resources, not only to the greater nations of Europe, but even to some of the great empires that have from time to time been formed by combinations of these nations. The American physical map may be regarded as a map of potential nations and empires, each to be conquered and colonized, each to rise through stages of development, each to achieve a certain social and industrial unity, each to possess certain fundamental assumptions, certain psychological traits, and each to interact with the others, and in combination to form that United States, the explanation of the development of which is the task of the historian.

The physiographers have recognized the existence of natural provinces and have mapped them under such names as the New England Plateaus, the Piedmont Plains, the Lake and Prairie Plains, the Gulf Plains, the Great Plains, etc. The Census Bureau has likewise attempted sectional divisions, on the basis of its maps of population, industrial conditions, resources, etc. Railroad managers

realize and act upon the theory of such sections and study them with a thoroughness, an insight, and a power of constructive imagination that may well be imitated by the economists and historians. Sociologists, also, like Professor Giddings, have attempted to state a psychological classification of American sections. But as yet the historian has hardly begun the serious study of sectionalism, in the continent as a whole. And yet this is a fundamental fact in American history. We need studies designed to show what have been and are the natural, social, and economic divisions in the United States. We need to trace the colonization of these separate regions, the location, contributions, and influence of the various stocks that combined to produce their population. We should map the streams of migration of the settlers from the various sections into new provinces, and the areas of their settlement. Thus the composition of the sections will be revealed. We should study their economic evolution, their peculiar psychological traits, the leaders which they produced, their party history, their relations with other sections. Such a treatment would illuminate the history of the formation and character of the American people.

Perhaps I may be permitted to illustrate this idea somewhat. If the historian were to select the New England plateaus as the province for his study, he would find that, after all the work that has been done in New England history, there remain some of the most fundamental problems for solution. Who is to trace for us the spread of population into the interior and north of New England during the second half of the seventeenth and the eighteenth century? Such a study, unfolding the economic and social aspects of the movement, the agrarian and religious causes at work, the modification of the people, the effects upon the social structure of New England, the party divisions and the institutions resultant, would give us important data for understanding that portion of New England which lies beyond the seaboard, and it would cast light upon the subsequent movement and contributions of this interior folk to New York and the Middle West. A detailed economic history of New England since the Revolution is sadly needed. It would bring out the relations of New England's physiography to her development: the pressure of population upon the hill regions; the transfer of economic interest from the sea to the water powers, from commerce to manufactures; the changing political attitude of the various portions of the section in response to the changing industrial interests; the economic, social, and religious conditions that led to the exodus from New England and the formation of a greater New England in the West. At present we do not know enough about this expansion of the New England people — a movement certainly comparable in its importance, in its influence upon American history,

to the much studied earlier colonization of the Puritans in New England proper. These later colonists carried New England men, institutions, and ideas into regions which far excelled the area from which they came in size, in productiveness, and ultimately in political influence. The area of the northern counties of Illinois entered by New England settlers constitutes in itself a level region of solid fertility equal to the combined area of Massachusetts, Rhode Island, and Connecticut, with all their unproductive hills. The influence of New England upon the political history of the Middle West, and through it upon the nation, has been profound. Its effect in forming the social and moral ideas of the central region of the republic can hardly be overstated. But we really know but little about this colonization compared with the detailed information which historical investigators have given us about the location of the homes of the Pilgrims. We cannot even state with approximate correctness the periods when the various Western states received their largest numbers of New England settlers. Nor has the replacement of this New England stock in the parent region by immigration been adequately studied. We shall not understand the New England of to-day until we have a fuller account of the industrial, social, political, and religious effect of this transformation of New England by replacement of its labor population and by the revolution in its industrial life, with the accompaniments of social stratification, loss of homogeneity, and changed ideals in respect to democracy.

Not to dwell too long upon this region, let us turn for a moment to indicate a few of the problems that arise when the South is considered from this same point of view. The term South as a sectional designation is misleading. Through a long period of our history the "Solid South" did not exist. We must bear in mind not only the differences between the various states of the Southern seaboard, but also the more fundamental differences between the up-country (the Piedmont region) and the Atlantic Plains. The interior of the South needs treatment as a unit. State historians of Virginia and the Carolinas, for example, recognize the fundamental contrasts in physiography, colonization, stock, and economic and social characteristics, between the lowlands and the uplands in their respective states. But as yet no one has attacked the problem of the settlement, development, and influence of the Piedmont Plains as a whole. This peninsula, as we may conceive it, thrust down through the Great Valley from Pennsylvania, between the mountains and the seaboard, the land that received the German, Scotch-Irish, and poorer white English settlers, developed, in the second half of the eighteenth century, an independent social, economic, and political character. It was a region of free labor upon small farms. It was devoted to cereals rather than to the great staple crops of the sea-

board. In its social structure it was more like Pennsylvania than the Southern commonwealths with which it was politically connected. It struggled for just representation in the legislatures, and for adequate local self-government. The domestic history of the South is for many years the history of a contest between these eastern and western sections. When the cotton belt, with slavery as its labor element, spread across this Piedmont area, the region became assimilated to the seaboard. The small farmers, raising crops by the labor of their own families, were compelled either to adjust themselves to the plantation economy, or to migrate. The process of this transformation and its effects constitute a problem not yet worked out in details. A migration of small farmers from the Piedmont across the Ohio and into the Gulf region followed. Many had moral and religious objections to slavery, many were unable to change their agricultural habits to meet the new conditions, many lacked the necessary capital for a slave plantation and preferred to accept the price of their lands offered by the planters, and to migrate to the public lands where they could continue their old industrial and social type of society. In this expansion of the South into the Ohio Valley and the Gulf Plains we have a colonization demanding study. Indeed, the whole industrial and social history of the South has been obscured by the emphasis placed on the political aspects of the slavery struggle. We need a history of the plantation in its various areas and at different periods. Such a study would give us the key to Southern history. The rise and fall of cotton values, the price of slaves, the agrarian history of the South, the relation of its political demands to these conditions, the distribution of rival political parties in the region, — these and similar topics would come into prominence if the historian should select for treatment the Southern provinces of the Atlantic Plains, the Piedmont and the Gulf Plains, their interaction, and the shifting centre of political power between them.

It is unnecessary to point out that similar advantages would come from attempts to explain the evolution of the social structure of the Lake and Prairie Plains, the Great Plains, the Pacific Coast, etc. We should study the contact of whites and Indians; the history of the occupation of the public lands in these provinces; the movement into them of settlers from other sections; the industrial transformations of the provinces from primitive farming up to the complex economic conditions of to-day; the development and influence of railroad systems; the rise of cities; the rise of peculiar views of life in the respective sections. Such topics carry with them a rich freightage of problems, essential to explain our own history and capable of casting important light upon the evolution of society as a whole.

The problems of inter-provincial relations need study also. The whole history of American politics needs to be interpreted in the terms of a contest between these economic and social sections. Periods when it seemed that there was no great issue dividing political parties will be found to abound in evidences — in the legislation of Congress, for example — that intense political struggles actually went on between the separate sections, combining and rearranging their forces as occasion showed the need. It is only when we get below the surface of national politics to consider the sectional party groupings that we are able to discover the lines on which new party issues are forming and the significance of the utterances of the leaders of these rival sections. Again and again, we shall find the party candidates anxious to conciliate the conflicting interests of the different sections and attempting to "straddle" upon vital problems, which nevertheless continue to force themselves to the front. The outcome is determined by the combination of these rival sections for and against the proposition. Studied from this point of view, the careers of J. Q. Adams, Clay, Calhoun, and Jackson, as spokesmen of their areas (to take examples), acquire new meaning and significance. Even more obvious, perhaps, is the slavery struggle. When it is stated that, in one important aspect, that struggle was a conflict between the Lake and Prairie plainsmen, on the one side, and the Gulf plainsmen, on the other, for the control of the Mississippi Valley, the Civil War acquires new meaning. Lincoln, Grant, and Sherman were the outcome of the influences of the Middle West; Davis, Yancey, and A. S. Johnston came from the Cotton Kingdom of the Gulf Plains. We are forced to reëxamine the political strife with reference to the forces which conditioned the leaders of these rival sections. We are obliged to study such problems as the development of the industrial resources of the regions, both before and during the war.

The economic rivalries and industrial inter-relations of the different sections of the country also are continuous factors in our history, and are more familiar to business men and to railroad managers than they are, as a rule, to the historian.

Passing, with these suggestions, from the problems that arise on breaking up our subject into provinces, let us next note that, for the explanation of the United States, we need historical investigation of a large number of topics as yet very imperfectly studied. It will be possible only to suggest some of the more important. First, let us inquire how far American historians have seriously attempted the study of the formation and development of our national character. The transition of the people of the United States from the conflicting ideals and traits of the colonial period to the present ideals of the nation, constitutes an important study in the evolution of the cul-

ture of the people, and, as yet, has been only imperfectly examined. We need to investigate the forces by which the composite nationality of the United States has been created, the process by which these different sections have been welded into such a degree of likeness that the United States now constitutes a measurably homogeneous people in certain important respects. We need to study the rise and growth of the intellectual character of the people, as shown in their literature and art, in connection with the social and economic conditions of the various periods of our history. In short, we need a natural history of the American spirit.

To take another topic, we need a political history of the United States which shall penetrate beneath the surface of the proceedings of national conventions to the study of the evolution of the organs of party action and of those underlying social and economic influences in the states and sections which explain party action. This matter has been indicated in connection with the importance of studying our history from the point of view of rival sections, but it is of sufficient importance to warrant separate consideration. We need to give a social and economic interpretation to the history of political parties in this country. In illustration, I may say that maps giving the location of Democratic counties and Republican counties in the states of the Old Northwest, through several decades of our history, show an astonishing coherence and persistence in area of these rival parties. Transition areas show close votes as a rule. This indicates that party grouping depends upon such social factors as nativity, persistence of traditions, economic conditions, etc., even more than upon leadership and reasoning. When such a study of our party development shall have been made, we shall be in a better position to comprehend the laws that determine party action in general, and an important contribution will have been made to the understanding of the development of society.

Another topic very inadequately treated is the agrarian history of the United States. To take one phase of it, we lack an extended history of the public domain in its economic and political influence. Fragments of these topics have been dealt with by able scholars, but we have no complete treatise on the subject. If, as I believe, the free lands of the United States have been the most important single factor in explaining our development, there should be increased attention to the land system. The history of land tenure and land values, the effects of the cheaper lands of the newly occupied regions upon the older settled country, the relation of cheap lands to wages and to society in general, need to be considered.

The subject of immigration has been hardly more than touched by the American historian. In spite of the fact that so vast a body of our population has been drawn since the later colonial days

from non-English stocks, the history of the European conditions that brought these people to us, the process of transformation of the immigrants into American citizens, the effects which they produced upon American society and industrial life, are all too little known. We shall not understand the American people without giving much more attention to this important subject.

It is impossible to do more than name some of the long list of topics as yet inadequately treated. There is needed a study of our relations to the American Indian. No systematic study of this problem as a whole has been made, and yet it is an exceedingly important one in the history of American development, and one from which rich results may be expected. It is hardly necessary to say that such a study of the negro is needed. The history of the law in America remains to be written by the coöperative study of men trained to historical investigation as well as in the law. The history of religion and of the various churches in the United States has not yet been written as a phase of the general social development of the American people. It should be considered in its relation to American history as a whole, and it will be found that some of the most fundamental factors in our history require such a study for their explanation. Recently some important beginnings have been made at a history of labor in America. This has been one of the most important neglected fields in our history, and it is to be hoped that thorough investigation will be given to the rise of the laboring classes, the organization of labor and its influence in American society. Somewhat connected with the same topic is the study of the development of democracy in the United States. As yet we know but imperfectly the stages in the development of the political power of the common people. A complete history of the franchise in this country and of the organization of the masses to impress their will upon legislation is a desideratum. A comparative study of the process of settlement of the United States would be another important contribution. If, with our own methods of the occupation of the frontier, we should compare those of other countries which have dealt with similar problems, — such as Russia, Germany, and the English colonies in Canada, Australia, and Africa, — we should undoubtedly find most fruitful results.

But I pass from the enumeration of these tempting problems of topical history, — an enumeration which is merely begun, not at all completed, — to suggest next that certain periods and areas of our history have been inadequately treated. The whole colonial history of the eighteenth century needs study. The Revolution and French and Indian wars of that period have withdrawn attention from the contemporaneous transformations in our economic, political, and social institutions. In some respects, this was the period of formation of the peculiarly American institutions in contrast to the English

institutions that were imported. Then it was that the American people, psychologically considered, originated. But little attention has been given to the period, aside from its military aspect.

The generation that followed the Civil War has yet to read its history also. The time would seem to have come when the historians should bestow some of their attention upon the wonderful development of the nation since the reconstruction period. How profoundly our whole life has changed in that period, it is unnecessary to say. The vast organizations of labor and capital, the tremendous increase in immigration whereby the American stock has been modified, the extraordinary growth of transportation facilities, and society with them, the concentration of industries, the spread of our commerce abroad, and the rise of the United States into the position of a world power, the new political issues — are but a few of the subjects as yet dealt with by the historian in only a cursory way.

From the lack of attention to our recent history, it follows that the area between the Mississippi and the Rocky Mountains — an empire in itself — is almost virgin soil for the historian. Nor is it a region without interest. It is doubtful whether anywhere more profitable work could be done than in the interpretation of the formation of society in this vast domain of the prairies.

Perhaps the first problem of all — one that I shall content myself with stating merely — is the problem of how to apportion the field of American history itself among the social sciences. The conception that history is past politics is now but little regarded, and the conception of history as the study designed to enable a people to understand itself, by understanding its origins and development in all the main departments of human life, is becoming the dominant one. But the history of the American people forces upon our attention the fact that no satisfactory understanding of the evolution of this people is possible without calling into coöperation many sciences and methods hitherto but little used by the American historian. Data drawn from studies of literature and art, politics, economics, sociology, psychology, biology, and physiography, all must be used. The method of the statistician as well as that of the critic of evidence is absolutely essential. There has been too little coöperation of these sciences, and the result is that great fields have been neglected. There are too many overlapping grounds left uncultivated owing to this independence of the sciences, too many problems that have been studied with inadequate apparatus, and without due regard to their complexity. I propose no solution of the difficulty; but it is important fairly to face it, and to realize that, without the combined effort of allied sciences, we shall reach no such results in the study of social development as have been achieved in the physical world by

the attack of problems of natural science by the combined forces of physics, chemistry, and mathematics.

In short, American history should be studied as capable of making most illuminating contributions to the history of social development. All of the apparatus needed to solve the problems arising from this conception of the nature of American history should be used.

SUPPLEMENTARY PAPERS

Professor Marshall S. Snow, of Washington University, St. Louis, presented a short paper on "Commerce and Discovery," in which he emphasized the "commercial idea" as being the real force actuating the discoveries of the fifteenth and sixteenth centuries, and criticised the undue importance which has often heretofore been given motives which were secondary and not primary. From the time of Columbus, Vespucius, and other navigators seeking new routes to India, to the later English and European explorations, the desire for fame, the love of adventure, and the wish to extend dominion, religious and temporal, were much less powerful than the overwhelming desire to open gold-mines and rival successfully competing nations in the pursuit of commercial supremacy.

Professor Evarts P. Greene, of the University of Illinois, presented a paper on "Some Aspects of Colonial Politics at the Beginning of the Eighteenth Century." The speaker contrasted the government of the colonies during the early period, ranging from the theocratic republic of Massachusetts to the semi-feudal palatinates of Maryland and Carolina, with the marked change which had taken place at the beginning of the eighteenth century. At this time the great majority of American people lived in royal provinces, having a governor appointed by the Crown and a representative assembly elected by the people, — the governor standing for prerogative, for imperial control, for British interests; the assembly for constitutional privileges, for autonomy, and for local interests. The development of various policies adopted by the Crown with regard to each of the colonies was concisely set forth, and the conclusion reached that throughout the entire first half of the century the influence of imperial government was being neutralized and at the same time there was being asserted vigorously and successfully the self-governing principle.

Dr. Charles E. Fiske, of Centralia, Illinois, presented a paper on "The Township Government in Indiana." It had for its fundamental point the assertion that the real basis of the liberties of the Anglo-Saxon race was the right of the people to regulate their local public affairs. It is the failure to recognize this fact that has kept the world wondering at the success of the Republic of the United States. As an illustration of this the speaker gave an account of the organization of Indiana from the Northwest Territory and the introduction of a new atmosphere in reference to local government. The fact that the township system of Indiana at present rests entirely upon legislative enactment, which may at any time be rescinded, needs serious thought if we admit that the surest safeguard of liberty is the power of the people to control their own local affairs. The danger from imperialism is not from above but from below. We are not in danger from the general government. The danger is when the people allow the affairs of their local government to get into the hands of the general government through sheer lack of attention.

Professor Frederic L. Paxson, of the University of Colorado, presented a paper on "The Territory of Jefferson: A Spontaneous Commonwealth," in which was set forth in an interesting manner the efforts of the mining districts of Pike's Peak and the adjacent country to form a suitable government which should preserve law and order, and protect property. Its short life of a year and a half was only an episode in commonwealth building in the West, but it illustrated the constant quality of frontier citizenship and the spontaneous instinct for self-government that gives to American life so much of its distinctive character.

SECTION F

HISTORY OF ECONOMIC INSTITUTIONS

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(*Hall* 2, *September* 23, 3 *p. m.*)

CHAIRMAN: PROFESSOR FRANK A. FETTER, Cornell University.
SPEAKERS: PROFESSOR J. E. CONRAD, University of Halle.
PROFESSOR SIMON N. PATTEN, University of Pennsylvania.
SECRETARY: DR. J. PEASE NORTON, Yale University.

ECONOMIC HISTORY IN RELATION TO KINDRED SCIENCES

BY JOHANNES EVAST CONRAD

(*Translated from the German*)

[**Johannes Evast Conrad,** Professor of Political Science, University of Halle, and Privy Councilor. **b.** February 28, 1839, Borkau, West Prussia. Ph.D. Jena, 1864; LL.D. Princeton. Member of Commission to revise the Code of Civil Law; Member of the Institute of France; Academy of Sciences, St. Petersburg; American Academy of Social Science, Philadelphia; International Institute of Statistics. **Author of** many books and essays on Political Economy. **Editor of** *Annals of Political Economy and Statistics,* Jena, 1870; *Collections of Essays on Political Science;* **co-editor of** *Manual of Political Economy,* Jena, 1899, 1902.]

THE enormous extension of the field of knowledge, together with its more thorough cultivation, has in modern times led almost all sciences to apply the principle of division of labor. Such is the trend in the recent development of the science of history. Beginning naturally with the description of the political life of a country in some period, history then turned its attention to the phases of the development of national life which underwent the greatest modifications and because of their striking features attracted general interest, that is, political events, struggles at home and abroad, changes in the governing forces of the state, etc. It was only gradually that interests enlarged and began to embrace other phenomena, as manifested in science and art or in economic activity.

There have been hitherto only three periods in which these sides of life have assumed such general importance as to demand equally with political events an historical presentation. This was the case in classical antiquity when philosophy and art were most flourishing, in the period of the Reformation when questions of religion stirred

the world and simultaneously discoveries and inventions began to revolutionize economic life, and above all in the last century when economic and social problems have swayed men's minds far more than transactions of state, the shifting of political power, or the opinions and deeds of princes.

The training of all intellectual powers with the impulse given by the art of printing necessarily aroused an increased interest in the development of mankind as a whole and brought out more clearly the final aim of all historical investigation, the knowledge of man in all his aspects and of his ways and means to assist the progress of civilization, in order by such study better to understand the present and the problems of the future. There thus arose, in contradistinction to the history of individual peoples, the conception of a universal history such as that attempted by Gatterer [1] and Schlözer [2] in Göttingen during the eighteenth century, and thus far brought to its most finished form by Leopold Ranke. But while unity of aim was being realized, the necessity became apparent for a division of the science in the form of the history of intellectual and of economic culture, each of these extensive fields affording opportunity for the life-work of students of very differing abilities and interests. Along with the history of art and literature came that growth of economic history with which we have here to deal.

As no science can advance without taking historical retrospects, it was natural that from the very beginning the representatives of the two great studies, history and political economy, which stand in the closest relation to economic life, could not well avoid making economo-historical investigations. It is, however, only very recently that these have become of fundamental importance. We find the mercantilists, as, for example, Antonio Serra, already studying the movement of prices and the monetary history of their country, in order to explain the events of their own time. And Adam Smith, who is so often reproached for his purely abstract method, turned to good account in his work the history of coinage as well as of trade in England. Robert Malthus supports his theory of population upon a study, reaching as far back as possible, of the increase of population in different countries. Saint-Simon founds his socialistic doctrines upon a description of the class differences emerging in the course of centuries. Of historians, Schlözer must again be named among the first who found an economic basis indispensable for universal history. Among later writers, Macaulay seems to me particularly worthy of notice, and his account of the economic condition of England at the end of the seventeenth century, of the state of

[1] Johann Christoph Gatterer, *Handbuch der Universalgeschichte, etc.* Göttingen, 1761.

[2] August Ludwig Schlözer, *Weltgeschichte nach ihren Hauptteilen.* Göttingen, 1792.

agriculture, of factory workers, of roads (vol. I, ch. iii), and also of the development of credit which led to the foundation of the Bank of England (vol. IV, ch. xx), must be regarded as a model study in economic history. In this connection should also be mentioned the attempts of Justus Möser to complete his historical presentation by a thorough description of the economic conditions of his small native region. But it was principally the further growth of political economy which of necessity led to the development of economic history. This, of course, was especially the case where the teachings of Adam Smith had never been freely accepted, but where problems far-reaching in their influence on economic life were always left in the hands of the state, as in Germany. Here, as early as the thirties of the last century, political economy received that threefold division which by emphasizing economic policy and finance gave the practical side of the science greater importance than in any other country. The historical investigation of the old guild system by Wilda,[1] of the financial history of the Middle Ages by Hüllmann,[2] etc.; in France, de Tocqueville's epoch-making *L'Ancien Régime*, with its new light on the French Revolution, are all results of the same general tendency. And here I would name especially my revered teacher, Georg Hanssen, who in his study of peasant holdings, the abolition of serfdom, etc., produced works, which, in explanation of present conditions, are models of their kind. The scholar found himself compelled, if he would judge modern conditions aright, to examine how and from what causes they came to be what they are.

But not alone for history and the practical problems of political economy but for theory as well did the necessity of economo-historical study become evident. I need only refer here to well-known facts. Friedrich List [3] sought in history his chief weapon of attack against the one-sidedness of Adam Smith. His statement of the various economic stages, erroneous though it was, made a long-enduring impression, as did also Hildebrand's [4] comparison of the stages of the barter, the money, and the credit system. Hildebrand's attack against socialism rests likewise on historical evidence, and in the first article of his *Jahrbücher* (1863), on the task of economic science, he particularly emphasized the necessity of economic history. Wilhelm Roscher [5] in his *Political Economy* enunciates scarcely a single proposition without bringing historical data for its support, and Knies [6] constantly pointed out the need of applying historical methods for the further development of economic science.

[1] Wilh. Ed. Wilda, *Das Gildewesen im Mittelalter*. Halle, 1831.
[2] K. D. Hüllmann, *Deutsche Finanzgeschichte des Mittelalters*. Berlin, 1805.
[3] *Das nationale System der politischen Oekonomie*. 1840, 7th ed., 1883.
[4] *Jahrbücher für Nationalökonomie*. Band II, 1 January, 1864.
[5] *Die Grundlagen der Nationalökonomie*. Stuttgart, 4th ed., 1861.
[6] *Die politische Oekonomie von Standpunkte der geschichtlichen Methode*. Braunschweig, 1853 and 1883.

More recently in Germany, two men have devoted themselves to the causes of economic history and have succeeded in gaining recognition of its very great importance. I refer to Gustav Schmoller and Karl Lamprecht. Both of them have been characterized by the one-sidedness which is essential for pioneer work, but each has sought to connect his science with economic history and to make it the foundation of a new edifice, Schmoller for political economy, Lamprecht for history. Little as I can give my full adherence to either of these investigators, I am nevertheless bound to acknowledge their great service in this direction and to express the gratitude we owe them for their work in economic history. But before we examine their opinions more closely we must recall to mind the problem and the inner nature of our science.

Economic history must from its nature not only investigate and describe the actual processes of economic life in different periods, but must especially follow their development with a view to explaining causal relations.

Just as history itself started out with the special investigation and description of a country at some definite period of the past, so is it also the task of economic history to give historical cross-sections either of the economic life of a country or a region or of a branch of production. Examples have been given us by Schmoller in his *Strassburg Weaver's Guild*, by Schönberg in his *Financial History of Bâle in the Fourteenth and Fifteenth Centuries* (1879), and by Bücher in his *Population of Frankfort on the Main during the Fourteenth and Fifteenth Centuries* (1886). Here belong also such works as Troel-Lund's [1] *Danish and Norwegian History of the Sixteenth Century*, and Klemm's [2] *History of Civilization*, the former containing a detailed investigation of housing conditions, etc., the latter a description of utensils and ornaments of all kinds from the first beginnings of civilization. This minute investigation has often been contemptuously regarded as useless trifling, and undoubtedly a love of minutiæ can be carried too far and thus injure the scientific character of a work. It is certain, however, that such detailed research is indispensable, and we should rejoice when investigators devote themselves to so tedious and ungrateful a task. Often the inner connection of various coöperating factors can be discerned only within a small field, and only by penetrating and minute investigation is it possible to discover those new and important factors which a merely general survey would fail to reveal. Just as the microscopist discovers injurious bacilli and thus the explanation of many diseases, so a similar close examination shows processes in economic life

[1] Troel-Lund, *Danmark og Norges Historie i Slutningen af det 16 Aarhun drede* 10 vols. Copenhagen, 1887.

[2] Klemm's *Kulturgeschichte*, 1843–52.

which would never otherwise be disclosed. Especially for the beginner are such special historical studies an unsurpassed means for obtaining a good historical training, for acquiring exact methods and a more acute perception of combinations, etc., while, and this is a weighty consideration, they permit the task to be proportioned to the capacity. Building stones may thus be obtained, which of course must be hewn into shape and in large numbers if an edifice is to be erected. But the important point is that the historical method be applied to determine the continuity of development, and in his initial investigations the student must confine himself to those particular branches or institutions of economic life which may be mastered by the beginner. With reference to the value of detailed investigation, I would mention Tooke and Newmarch's [1] valuable *History of Prices*. They have given us entirely new ideas, not only as to the conditions of earlier times but still more as to the nature and significance of single economic measures. Thorold Rogers's [2] historical studies of agriculture, commerce, industry, and prices in England, and Levasseur's [3] on the laboring classes in France, also belong here.

It was only by a comparison of guild institutions in their different stages of development that a correct understanding was obtained of the essential nature of the guild system. A closer study of the condition of roads at different periods affords us an explanation of the peculiarities of trade, of different branches of industry, and of domestic life at different epochs. Truly amazing is the bee-like industry with which hundreds of investigators in Germany now continually engage in such detailed studies, concerning which Lamprecht,[4] for instance, during the eighties gave in my *Jahrbücher* very interesting reviews.

The chief task, however, will naturally be to construct a well-balanced whole from these single contributions, not merely to give a survey of the economic activity of mankind at different periods but to present this in its historical development. As universal history tends to develop from national history, the history of civilization from political history, there must in like manner gradually emerge an all-embracing economic history of different countries and finally the economic history of mankind; thus for a certain country

[1] *A History of Prices*, etc., from 1793 to 1856. 6 vols. London, 1838–57.

[2] J. Thorold Rogers, *A History of Agriculture and Prices in England from 1257–1793*. 7 vols. Oxford, 1866–1902.

J. Thorold Rogers, *Six Centuries of Work and Wages*. London, 1884.

J. Thorold Rogers, *The Industrial and Commercial History of England*. London, 1892.

[3] Emil Levasseur, *Histoire des classes ouvrières en France depuis la conquête de Jules César jusqu'à la Révolution* (1859 2 vols.), and *depuis 1789 jusqu'à nos jours*. Paris, 1867.

[4] *Jahrb. f. Nationalökonomie*, 1882, 1883, 1884. *Die wirtschaftlichen Studien in Deutschland*.

and a certain period, Jakob Burckhardt has given us a history of civilization of the Italian Renaissance, and Gustav Freitag, in a different manner, descriptions of life in the period of the German Reformation and in the following centuries. And what the historian Schlosser feebly attempted in his *History of the World* has become in Lamprecht's [1] hands the foundation of universal history, while economic history, after Biedermann's beginning, in his *Economic History of Germany in the Eighteenth Century*, and especially in von Inama-Sternegg's ambitious *Economic History*, is clearly aiming to describe the development of economic life from the standpoint of the economist. The way has thus been shown, and it will undoubtedly be pursued with growing success in the immediate future.

But the position of our science in method and aims will best become apparent if we compare it with the mother science, with history itself, which has hitherto regarded the political side of human development as its essential and indeed sole material. It confined itself to the history of the state and therefore fulfilled only one part of the task which is set for it to-day. It is a tendency of human nature to pass from one extreme to another, and after neglecting to excess the economic and social factors there is now a widespread movement to take them as the starting-point and essential foundation of all historical science. It will therefore be necessary to weigh carefully in order to find the true mean. But no one any longer denies that for a proper understanding of political events a knowledge of social and economic conditions is also necessary.

A sure basis for decision will, it seems to me, be found at once by recognizing unreservedly that each advance in civilization has been possible only in and through a well-ordered state, that the formation of the state has been the most important and significant expression of the grade of civilization at all periods, just as on the other hand the state has exercised the most far-reaching influence upon social and economic life. It was, therefore, only natural that the organization of the state and political activity should have been made the chief subject of historical study, particularly as these most attracted attention and were most easily described. Difficulties arose when the next step was undertaken, and the attempt was made to explain the motives of political action by investigating natural conditions, by analyzing the psychology of leading personalities, and by studying the character of the population upon and through which these leaders had acted. For not with every people could Cæsar, Frederick the Great, or Napoleon have achieved the same results; furthermore, the same people, the same race, has been at different stages of its progress capable of very different degrees of accomplishment; every period has its own conception

[1] *Zur jüngsten deutschen Vergangenheit*, vols. I and II. Freiburg, 1903.

of law and custom, and the nation has therefore been animated in turn by different ideas which have influenced its action. The history of civilization has here to be consulted. Geography, too, must play its part, since the natural conditions of the earth's surface form the basis for the development of nations as of mankind. Even if Liebig's saying went beyond the mark, that "ever and in all times it has been the soil with its fruitfulness which has conditioned the life of nations," if in truth civilized man in his progress has succeeded marvelously in emancipating himself from nature and in ruling her more and more instead of being ruled by her, it nevertheless remains true that here definite bounds are placed to the power of man, that until very recent times economic development has been ruled by nature, and that this development now and for all time is in the highest degree influenced by the conditioning force of climate and soil upon the natural capabilities of man. Thus the superiority of England, its economic and political predominance in the last century, is due as much to the coal and iron in the depths of its soil and to the waterways which lead directly to the mines as to the physical strength and mental energy of the people which has flourished upon its soil and in its temperate climate.

Buckle has already pointed out the great influence exerted by climate upon human character and intellectual capacity, but it is far more important to observe how under the same natural conditions man has at different periods developed quite different capabilities, how he has learned to make use of nature and to employ her gifts for the satisfaction of his wants. These wants, however, have not remained the same; on the contrary, they have continually changed, and not entirely without justice has it been said that the history of human wants is the history of human culture, both economic and intellectual. Cultivation of the intellect increases the capacity for enjoyment and at the same time the ability to devise new means of satisfying the new wants. It was only higher civilization which made possible the centuries of invention, that of the Reformation period, and again the last century; and the new inventions in turn, which had made possible the production of new and cheaper commodities, aroused the taste and desire for them in widening sections of the population, so that despite the great labor-saving expedients, the population, even with the most strenuous exertion, is unable to produce all that is desired. Thus man is just as inventive in awakening within himself new needs as in discovering new means of satisfaction, and through the problems thus set him, which to his good he can never finally solve, he is led to an ever higher development of his intellectual powers. Here lies the chief foundation for the progress of civilization. The life of the state appears thus only as means, not as end. The study of the growth of economic interests

and activities assumes, therefore, up to a certain point an independent character, though never without regard to the organization and action of the state, which, however, falls into a secondary position. A division of labor must be perfected in which economic history takes its place beside political history as a helpful companion. They are destined to walk arm in arm along the scientific highway, not, as occasionally seems to be the case, to tear one another's hair in rivalry.[1]

I hope now to have sufficiently indicated the high value of economic history for universal history. It appears still more necessary to define the limits of its usefulness and therefore of its importance. Since the epoch-making appearance of Darwin, his doctrine of evolution has been passed on from the natural to the mental sciences, above all to history, and in the theory of evolution the mechanical development not only of races but of nations and states, indeed of all civilization, has been assumed and the attempt made to explain it. According to this theory, natural conditions, influencing the social and economic life, determine also the mental development of mankind. In his materialistic conception of history, Karl Marx in particular undertakes to prove that ideas of right and law itself are the natural and necessary results of the social economy. The influence of individuality and of ideas is thereby by no means absolutely denied, but it is restricted within very narrow bounds. The views of Auguste Comte in philosophy, of Lamprecht in history, of Wohltmann and others in natural science, tend in a similar direction. In the development of civilization they are inclined to assign too little significance to the free will of man, to the single individual, and to the action of chance. Everything, they hold, is subject to the laws of a mechanical development, and the discovery of these laws is the proper task of history and of political economy.

The physical theory of life dominates science to-day so completely that I need not here discuss in detail what concession must undoubtedly be made to it. Every human action is the necessary consequence of definite motives; furthermore every phenomenon in nature, whether in economic or social life, has its sufficient reason. There can, therefore, be neither chance nor free will in the sense of unmotivated caprice or unrelated action. Rather is the question to be asked, whether from the fact that everywhere there is apparent a connection between cause and effect and that intellectual activity is bound up with and conditioned by material environment, the necessary consequence must be the acceptance of the materialistic theory of life,

[1] K. Lamprecht, *Zwei Streitschriften, den Herrn H. Oncken, H. Delbrück, M. Lenz zugeeignet.* Berlin, 1897.
Dietrich Schäfer, *Das eigentliche Arbeitsgebiet der Geschichte.* Jena, 1888.
Dietrich Schäfer, *Geschichte und Kulturgeschichte.* Jena, 1891.
E. Gothein, *Die Aufgaben der Kulturgeschichte.* Leipzig, 1889.

or whether on the contrary it rests upon a misunderstanding.[1] I am decidedly of the latter opinion. We see developing upon the same soil completely different stages of civilization, though doubtless in the last analysis definite bounds are set to human activity by natural environment, as for instance, to cite an extreme case, in the polar regions and in the tropics. But within these bounds lies so infinitely wide a field that in most cases it is negligible in our investigation. Economic history proves to us man's great independence of nature. His peculiar capacity for progress is independent, not altogether of external influences, but of those accessible to human knowledge, which alone, therefore, demand our consideration. If in the extreme sense of the word there is no chance, still from the standpoint of human judgment chance does exist in historical events. The death of a ruler at a critical moment, as for example of Gustavus Adolphus in the battle of Lützen, has of course a natural explanation in the encounter of a good marksman with the king on the battlefield, but from the historical standpoint it nevertheless remains an accident of the deepest significance for the further history not only of the Thirty Years' War but of Germany. So also the fact that Frederick the Great remained unscathed in every battle and reached a great age, although it had its satisfactory natural reason, was for the historian accidental, since causes thus conditioned are withdrawn from human observation and do not stand in any inner connection with the general course of events. At the same time it has nevertheless been already admitted, or at least indicated, that certain prominent individuals can have and continually do have a definite influence upon the further development of civilization as a whole, even though they are bound in their activity to the soil where they have grown, are the product of the *milieu* out of which they have proceeded, and their influence is determined by the state of civilization and the racial characteristics of the nation upon which they have operated. That just three such men found themselves together as our Emperor William, Bismarck, and Moltke, was for Germany an accident which we have to thank for the existence in its present form of a united German Empire, and no one can say when and how the same end could otherwise have been attained. Because of Bismarck's conviction that his purpose could be effected only by an equal, universal suffrage, the social-democratic party has obtained the political importance which it possesses among us to-day and the Centre exercises a decisive influence upon our legislation. That only the powerful personality of a Luther called the Reformation into being, guided it in the course it took, and made it actually effective, is now generally recognized. The mere enumeration of names is sufficient to recall the influence on all economic life exercised by

[1] Ed. Meyer, *Zur Theorie und Methodik der Geschichte.* Halle, 1902.

such a genius as Watt, and in more recent times by Gauss and Weber, Werner Siemens, and Edison. And it is equally unnecessary to prove the proposition that their influence upon mankind would have been reduced to nothing had they been born, instead of in a modern civilized country, in the interior of Africa or in Turkey, or several centuries earlier.

It is therefore not always safe to infer from the study of earlier conditions and events what effect the same cause would exercise in our own time. The conformity of events to law, which in and for itself cannot be contradicted, is not binding for us where we cannot trace it. It is, indeed, of the utmost importance to make clear that in political, social, and economic life such conformity to law can be observed only to an extremely limited extent, but that chance in particular events and the influence of the individual play everywhere the dominant rôle in development.

But when we survey the limited range of human knowledge, we shall not regard it as the task of historical and economic science everywhere to search for laws. We must satisfy ourselves with tracing regularities of sequence and with discovering, and as far as possible isolating from the infinite mass of coöperating factors, those which are of the first importance.

My chief object is, however, to explain clearly the attitude of economic history toward political economy. But first its relation to statistics must be at least briefly indicated.

The old saying of Schlözer in Göttingen, that "history is continuous statistics, statistics is stationary history," is to-day no longer applicable. Yet strange to say, it has recently been emphatically restated by Karl Menger. Although I grant at the outset that statistics is now well established as an independent branch of study, with a large field of investigation in the statistics of population and in moral statistics, a field exclusively its own where it applies its own method, it remains, nevertheless, only a *method* which, precisely like the historical method, has been and still is used in almost all sciences and especially in economic history. It must, therefore, be most emphatically denied that the present alone is its field of investigation. It is a systematic, numerical observation of masses, which seeks to elicit group characteristics, and this observation of masses can naturally be applied to the past as well as to the present. Indeed, as is well known, this is often done in order to discover the process of development by a comparison of different periods. When history proceeds in this manner it utilizes both methods, the historical and the statistical. The one method does not exclude the other; on the contrary the two are combined. Only statistics, because of its recent origin, possesses very few older data, and is therefore in the main confined to the present which constantly offers an enormous

material for its use and demands from it the solution of ever new problems.

Economic history has been supplemented by ethnology and ethnography. For historical investigation finds its limit long before the beginning of civilization, where tradition fails, while it is of the greatest importance to study the nature of man before he has been influenced by civilization. The savage is an extremely important object of observation for the political economist, though unfortunately too little studied from this point of view. Bücher in Leipzig has certainly rendered a great service in having made the attempt to trace back the first beginnings of economic activity.

My most important task is, however, to point out the relation of economic history to political economy, which treats of the systematic activity of a people (or of mankind) for the satisfaction of its material wants. Both studies consider the economic life of nations, the former its development, the latter the nature of economic activity in general, the theory of economic life, and in addition, in the study of economic policy or the special, practical division of political economy, the duties of the state in the furtherance of the national well-being. Hence the especial task of political economy is to grasp the actual conditions of the present, keeping in view at the same time the immediate future, whereas economic history deals exclusively with the past. Herein lies the contrast and at the same time the connection between the two studies. The attempt has indeed been made to bridge over the contrast by talking of contemporary history, seeking thus to open to economic history the study of the present. Of course all human activity which we can observe is something which has already happened and therefore belongs to the past. But that is a play upon words. It is indifferent to us what the study is called; the chief thing is that it should be undertaken.

After what has been said, it will need no further discussion to show that political economy can just as little dispense with the study of history as can any other science. Even in the dispute of the Vienna and Berlin schools of political economy, this has been freely admitted and expressly emphasized by the opponents of the historical school. Opinions are at variance solely as to whether the inductive or the deductive method shall be regarded as the basis of investigation, and as to the extent to which the division of labor is in this respect to be applied. Even upon this point opinions have tended to converge. Opposition was originally made more acute by the radical difference in the personal inclinations and abilities of the leaders.

Schmoller as historian thought that only through historical studies could he further his science, and while for a time it appeared as if he were inclined to merge political economy in economic history,

the two volumes of his *Grundriss* which have recently appeared show that he has finally convinced himself how little his historical studies alone sufficed and how indispensable is the deductive method of the classical school of political economy, as indeed he has repeatedly and emphatically stated. Without this method he could certainly not have produced the important work which we are so fortunate as to possess. Fully, however, as I recognize the impulse which he has given our science, I cannot admit that upon the foundation of economic history he has erected any new edifice; rather he has extended the original structure, given it an enlarged and firmer foundation, and has improved and adorned its interior. He cannot conceal from himself that his historical investigations have done less to advance theory than its practical application, for even in his more theoretical work (it is indeed only the *allgemeine Teil*), theoretical examination of the inner nature of economic activity takes a very minor place. But it cannot be denied that upon the road already entered much more can be, and we confidently hope will be, reached.

Menger [1] holds that in political economy progress can be made only by isolation of the single phenomenon, by abstraction of actual processes, that is to say, psychologically, and that only in this manner, not through experience and historical observation, may exact results and economic laws be found. That by his method the so-called classical school laid the foundation of our science, and that to the notable work of men like Heinrich von Thünen, Jevons, and recently, beside Menger, Böhm-Bawerk, Wieser, Patten, we are enduringly indebted, there can be no doubt. But it is equally certain that what they have accomplished has been only within narrow limits and that their methods can be applied only to a few parts of our enormous field of investigation.

It is undoubtedly true that laws are discovered only by abstraction from economic life, by isolation of processes and of the operation of single factors. As the Vienna school desires to lay chief weight in investigation upon the deductive method, and after the example of the old school seeks to ascertain economic laws of nature, it is clear that it would assign to economic history a merely subsidiary rôle. But the student who is content to start with the view that in political economy only certain regularities may be observed, and that the problem is rather to determine the modifications which civilization effects in the operation of human economic wants and to observe the various combinations of different coöperating factors, will strive to use the method of analogy, to study phenomena in different periods and countries, and thus to render more acute his judgment of the present.

[1] *Untersuchungen über die Methode der Socialwissenschaften.* Leipzig, 1883. *Die Irrtümer des Historismus in der deutschen Nationalökonomie.*

If, with John Stuart Mill, we identify political economy with the theory of value, or, with Menger, lay the chief stress in economic investigation upon the determination of concepts of value, of money, of wage and price regulation, we must necessarily give the preference to the deductive method. But even here economic history can perform an important service. It has shown us the variations in the value of the precious metals and of money at different periods, and thus leads us to the causes by which value is determined as well as to the peculiarity of the functions of money, indicating how far it partakes and how far it divests itself of the character of a commodity. Only by the empirical method have we learned to understand the nature of credit and the economic significance of paper money, bills and notes. Tooke and Newmarch and others, by following up the history of prices, have contributed greatly to a clear understanding of price regulation. The study of wages during the last three decades has proved to us in Germany that they are not determined solely by the relation of demand and supply, but that in our stage of civilization ethical considerations play an important part, that the pressure of public opinion in favor of the working classes is a factor in the regulation of wages and prices, which formerly was not at all suspected and would scarcely have been discovered by the deductive method, at any rate would certainly not have been correctly estimated, since it varies with civilization.

But the limit of the service which economic history can perform for political economy is prescribed by the fact that in modern times such radical changes have taken place in economic life and in our culture that conclusions from the past can be drawn only in a very limited degree for the present. The political economist must therefore leave archive studies for the most part to the historian, and he must regard it as a principle that for him the object of historical studies is not to determine the conditions of the past in themselves, but to take account of them only so far as they are needed to throw light on the present. The historian may bury himself in the study of a remote period and there remain, but the political economist must start with the present and trace the development back as far as appears necessary for his comprehension. Historical work is and remains for him a secondary matter, the investigation of the present being of prime importance. The whole contrast between the present scientific standpoint of political economy and that of the Manchester school lies undoubtedly in the conception that the guiding motives of man in economic life have not remained the same, but have experienced the utmost change through civilization, thus breaking down the theory that human actions conform to law. On the one hand, therefore, the necessity of studying the development of man becomes evident, and on the other, the limited validity of the ex-

periences of past times for the present and naturally of the present for the future.

We accordingly reach the result that between political economy and economic history there exists a fundamental difference, and that the latter must take an independent position in its relation both to history and to political economy. There can be just as little possibility that it should be merged in history as that it should furnish political economy with its foundation. Economic history must be classed as an independent science, while at the same time it should render important aid to political economy. It is a pressing need of the time to establish chairs for economic history and to provide it with liberal means so that it may fulfill its high mission more adequately than has hitherto been possible. It should be regarded and treated, not as an appendage of political economy, finding only incidental and subordinate application, but as an independent branch of study and an end in itself.

If we began with the division of scientific labor and its influence upon the development of separate branches of study, we must now point to the union of labor which appears a necessity even more in science than in economic life, lest the higher aim, the fullest possible knowledge of human nature and activity, suffer and the uniting intellectual bond be lost.

In conclusion, let us once more briefly summarize the chief result of our discussion.

History is the science of human development in all directions. It commenced naturally with the organization of the state, that is, with political events. As early as the Reformation period the development of religious thought and legal institutions began not only to be studied but to be brought into connection with political history. In the second half of the eighteenth century were added the development of art and science, the history of philosophy and of all literary activity. Thus, more and more, was built up the general history of civilization. Whether the starting-point should be the state or society (as in sociology) we will not here discuss. Finally in recent decades attention has also been directed to economic life, and it has been recognized as a necessary supplement to history; for it has been seen that the provision for material needs is not something unessential in human life, but that the problems thereby set mankind are extremely complicated, requiring great ingenuity for their solution. In recent times economic interests have acquired greater importance, and begin more and more to dominate political life. Not without justice has it been said that the wars of the future will be caused by the conflict of economic interests, not as in earlier times by questions of political power or by the ambitions of rulers. Economic history must thus become a part of history itself, without, however,

in the least disturbing its foundation. It is undoubtedly destined to exercise a still more important influence upon political economy, and by a more accurate knowledge of facts and their development to provide for it in greater degree a solid, well-built framework. By this means economic policy or practical political economy, which has only recently acquired an independent position, may gradually gain a dominating importance.

In this connection America especially has lofty tasks, I might indeed, say duties, to fulfill toward science. In no other country has economic development progressed so characteristically, so rapidly, and so fully under the observation of the watching, civilized world, and this at a time when statistics are constantly giving us instantaneous pictures of conditions. The extremely valuable and interesting material which is thus supplied must of course be supplemented by special investigations. But so far as I have surveyed the literature, there seems to be a great lack of such special studies, although to undertake them should be a real pleasure for every American with economic interests. The attention of Americans, however, has hitherto been directed, naturally enough, more to the future than to the past.

What an instructive picture might be drawn of the effect of inventions upon the transformation of industry! But as to the extent of small industries and their importance even at the present day we lack all information, to say nothing of the changes in the last decade. And if such a study be made, it will certainly yield quite unexpected results, not only for Germany but for America, and will remove considerable prejudice.

The changes in the size of holdings of landed property and of agricultural industry in different parts of this country, resulting from colonization and the extension of the railroad system, and the consequent lowering of the prices of agricultural products, are most instructive even for purely theoretical investigation. To be sure, statistical data alone would not suffice, least of all in the broad averages usually given, but changes should be traced in detail for small areas in different regions which may be regarded as typical. We most keenly need a history of prices and wages for America. Much that is valuable is offered to us on the financial history of the United States, of the separate states as well as of a few municipalities, but of the smaller towns we know almost nothing. Yet it is precisely the comparison of these different bodies which would be of extreme interest for the science of finance.

It would be easy to multiply examples, but I shall give only one more here. One of the most important questions of the time is whether the course of modern development leads to the destruction of the middle class or whether it raises and strengthens this class. Is

the colossal wealth of individuals accumulated at the cost of the lower and middle classes or is it developed concurrently with the wealth of all classes? Opinions stand in violent opposition. A determination of the form which this relation has here taken would be nothing less than decisive, for all the characteristics of the prevailing tendency are here more pronounced than anywhere else and their effects are typical, though only of course conditionally, for European countries. The question naturally cannot be solved with the first attempt, but it is capable of solution if all the different phenomena of social and economic life are taken into account.

American students could do us, science, and their own country no greater service than by devoting themselves to the historical investigation of their own economic life. We surely on our side shall not fall behind them in the corresponding study of European economic history. But here also comparison and coöperation in the labor of the two halves of the world will prove exceedingly fruitful and even decisive for progress.

THE PRESENT PROBLEMS IN THE ECONOMIC INTERPRETATION OF HISTORY

BY SIMON NELSON PATTEN

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To the man of theory and often to the man of practice the study of history seems a useless occupation. Both have an interest in the present and demand solution of present problems. Has history anything to offer these men, and can its methods be applied to the investigation of present conditions? At first sight the theorist gains little from its perusal. He finds the attention of historians limited to events of little present importance; wars occupy more space than the avocations of peace, and personal affairs are discussed to the neglect of social tendencies and principles.

If a reader overlooks the prolix statements of non-essentials to which some historians are prone and seeks principles to guide present action, what does he find but the familiar assertion, "History repeats itself"? Driven back from history, the searcher for present guidance once more resorts to theory, in the hope that some light may be struck that shows the road he is blindly seeking. But all in vain.

Is there no link between these two disconnected methods of research? Must the past be interpreted by a method that yields no valuable results and the present by a method that discards all reference to the past?

This opposition and these defects continued for a long time before any remedy was suggested. Historians sneered at the theorist, and the economist had an openly expressed contempt for those who did not use his methods. It is only of late that a new method of research has arisen, giving to history a wider meaning and offering to the economist a test for his theories.

Progress in this direction has, however, been slow. The historical appetite for facts is in a measure satisfied by the study of the economic conditions of earlier times. It acted as a limitation on theorizing to know that the conditions economists emphasized as parts of a perpetual economy were of recent origin and have application to but a small section of humanity. The doctrines of free competition, personal liberty, free trade, individual bargaining, and like tenets of the current economic philosophy thus lost their position

of supremacy, and sunk into the company of the minor doctrines that are plainly limited by time and space.

The resulting changes in mental attitude are in a large measure due to the efforts of the historical economists, who taught the limitations to which all economic doctrines are subjected. Yet in spite of a breadth of view and great command of facts, they did not destroy the old school, but merely compelled its adherents to make more modest statements. This failure was due to the lack of a method of historical interpretation in harmony with the facts they were using and the conditions they were investigating.

Economic history and the economic interpretation of history are different concepts, and have been forced upon public attention by two different groups of thinkers. Economic history is a question of facts — of the discovery and utilization of those facts of yesterday of which the economist of to-day avails himself. The economic interpretation of history is a study of these data and of the method of utilizing them. It enables us to reason about past events in the same way we reason about present events, and to find common principles that will apply to both. Economic dogmatism concentrates attention on the dominant features of a given age or nation. Economic interpretation eliminates dogmatism by comparing the dominant features of many ages, and clearly presents their points of difference and similarity. In this way a new theory arises, with a broader basis and more closely in touch not only with history but also with the sciences from which the economic premises come.

There are, however, two diverging lines of thought, each of which is called an economic interpretation of history. One group of men ask: What light can history throw on present events? Their interest is in the present, and they use history as a method of interpreting it. The other group ask: What light can our knowledge of present events and conditions throw on those of past ages? The first group assumes a knowledge of the past superior to that of the present and hopes to use this knowledge to clear away the difficulties of interpreting contemporary events. The second group contends that our knowledge of present economic conditions is greater than that of past ages and hence that it can help us to supplement our meagre knowledge of the past.

If we wish to be accurate in the use of terms, this first viewpoint should not be called an economic interpretation of history, but an historical interpretation of the present. That which is interpreted is not history but current events, while the method used is not economic but historical. It is only the second viewpoint that attempts to interpret history, and does it by an economic method.

It will add to the clearness of the contrast if the term "history" be eliminated. History in both cases is used in a popular way, and

as a result its interpreters fall into a needless conflict with those historians who want the facts of the past rather than their present significance.

It would be clearer to speak of the social interpretation of current events instead of the historical interpretation. Those who employ this method are interested in social affairs and use social methods of investigation and social principles oftener than historical methods and principles. It is still more clear to speak of the traditional interpretation of current events. The facts presented and the ideals emphasized are those which, wrought over into popular tradition, have become motives prompting intuitive response. The popular historian seizes the telling events of the world's history and by recounting them vividly tends to make people act to-day as their forefathers acted in the epoch-making struggles through which the race has gone. "Act to-day as your fathers acted in their day." This advice may seem the hand of history, but it is the voice of tradition. The economic interpretation of history starts with an analysis of present conditions and opens the way to a theory of social causation. In contrast with this method the historical interpretation of present events accepts the traditional view of the past and uses social prediction as a means of exerting social influence. The prophet strives to be a social leader. Economic interpretation as a method thus stands in contrast with social prediction. There is no real opposition between economics and history or between economics and sociology. It is only in the field of prediction that opposition appears. The scientific historian avoids the conflict by refusing to predict, but as the historian becomes modest, the social enthusiast becomes bolder, and, using the same methods as the predicting historian, he falls into similar errors.

Should social investigation begin with a study of the past and predict events from it as a base, or should a study of the present be first made and its results be used to interpret the past? Of the past we have social tradition; of the present we have economic knowledge; which is the more reliable as the basis of deduction?

Were not the knowledge of the past defective, its study might give a starting-point equally valuable with economic interpretation that starts from the firm foundation of present fact. The first canon of social prediction is, "History repeats itself." A series of repeated effects occurring under similar social institutions gives ground for the judgment that these institutions will always produce like effects.

In contrast with this, economic interpretation starts with the assumption that like economic causes produce like social results. Prediction can be made from one race or civilization to others only as the economic conditions back of them are the same. It is not like race, like institutions, like tradition, or like consciousness of kind,

but like economic conditions that give a sound basis for prediction. Social prediction is of necessity based on data drawn from different races, institutions, and civilizations. This evidence has little value unless a similarity of economic conditions exists as the antecedent of race, institution, or civilization. An economic interpretation of past events must therefore precede valid prediction.

There are two channels in which thought runs and two bases on which it rests. The physical environment of a man is made up of objects upon which welfare depends. The force that perpetuates and increases this contact is desire. No object is a part of the conscious environment of men until they desire it or the means of avoiding it. Thought based on desire or arising out of its influence is plainly economic. But thought has another element not derived from the immediate objects of interest. This is tradition. Past conditions and events do not persist. The events and conditions of to-day cease with to-day, but new ones appear to-morrow. Economic conditions are thus short-lived, but the habits and thoughts that yesterday's conditions evoked live on and modify the present.

The newer biology makes the distinction between natural and acquired characters and affirms that the latter are not inherited. All acquired knowledge must pass from generation to generation by the repeated impressment of habits and thought upon the individuals of succeeding generations. This knowledge depending on constant repetition for its continuance is tradition, and imitation is its great vitalizing force. Economic thought is the social expression of desire as tradition is the social expression of imitation. These two forces control current events, and the differing interpretations of the past and the present depend upon the relative emphasis given them.

Professor Giddings has shown that the stimuli arousing activity are of two orders.[1] The original stimuli come from the immediate environment; the secondary stimuli are the products of past social life kept alive in the present. These products of past social life have, however, only one way of being continued, and that is through the constant repetition that creates tradition. The original stimuli also are of no importance unless they awake response, and this response is desire.

Changing the viewpoint from stimuli to that of response to stimuli makes desire and tradition the sole forces that determine present action. In this contrast tradition includes all of the products of past responses that have been continued through imitation reinforced by repetition. These traditions blend, and as they blend they become the basis of history, institutions, and ideals. Desire operating under favorable conditions creates mobility of men and

[1] "A Theory of Social Causation," a paper read before the American Economic Association at the New Orleans meeting.

goods. This mobility concentrates men in productive regions, who bring with them the traditions of the localities they leave. The mixing of population forces a blending of traditions. Opposing elements are suppressed while similarities are emphasized, and around them the old traditions cluster in new forms. These blended traditions are elevated into morality, broadened into ideals, and projected as standards of future action.

Each new mingling of population due to an increase of resources makes a breach between economic conditions and inherited social traditions. Before an equilibrium is reëstablished a transformation of tradition takes place, giving higher ideals and better institutions. The breach between economic thought and social idealism is thus steadily widened and the opposition between them is more pronounced. In its lower forms tradition is the result of conflict, and reflects the opposition arising when men contest for the meagre results of isolated localities. It is usually expressed in race feelings and hatreds. In its higher forms, however, tradition is an expression of likeness. A consciousness of opposition and fear is replaced by a consciousness of kind.

Each element in a composite population has its own traditions, which blend with other traditions only when the common points are emphasized and the antagonisms are suppressed. The oft-repeated stories of the old life are retold so as to interest larger audiences. To each group of hearers the newly told story can have a meaning only when it incorporates some of the tradition with which it is familiar. Writers and orators instinctively suppress points of discord, and blend and elevate what appeals to all. Tradition is thereby transformed into idealism, and becomes a standard far above that realized by individual men.

Government in England, for example, is plainly a group of traditions. Transferred to America it becomes political institutions, transferred again to cosmopolitan France it appears as political ideals, while in centralized Germany it is further transformed into social democracy. Each step has resulted from the discarding of local antagonisms and the emphasis of generalized truth.

Because of the simple conditions under which the Republican party arose it could concentrate its attention on three evils, Rum, Romanism, and Rebellion; but in recent years, to meet the conditions of a more composite population, it has been forced to elevate its standards and to generalize its principles until it appeals to the classes, sections, and races it formerly antagonized. The narrow tradition of the primitive American is thus transformed into a broad liberalism, and the American Government becomes capable of handling race problems that our forefathers left untouched.

A labor leader who undertakes to organize unskilled laborers

finds a race consciousness built up on race antagonism. When his thought is translated into the language of his hearers, words are used which express the hatreds surviving as race traditions. The employer is associated with the foreign misrule, and the pent-up feelings which in their old homes went out against their race oppressors are turned upon him. A class consciousness is thus developed that submerges the race antagonisms of earlier epochs and prepares the way for a broader citizenship. Race responses are replaced by class responses, and these by social coöperative responses, which in turn are elevated into a democratic cosmopolitanism. Every transformation of tradition gives to its standards a greater coercive force. The result is idealism which by covering the future as a social projection gains a universality akin to religion.

Social mobility arises from the pressure of increasing desire; social stability from the growth of tradition. Social projection is the union of the two to be realized only in the distant future. With these forces at work there can be a steady transformation of tradition from a crude form of ancestor worship to an attractive social Utopia where all ideals become realities.

I give below some of the stages through which thought passes during this transformation. In a rough way they indicate the line of progress though no claim is made to strict accuracy:

Imitation,	Biography,
Tradition,	History,
Ancestor worship,	Romanticism,
Hero worship,	Literary lore,
Primitive poetry,	Individualism,
Precedents,	Idealism,
Codes,	Social democracy,
Morality,	Social projection.

Social democracy fixes the attention on the present, and hence tends to emphasize the distribution of wealth. Social projection pictures an improving future, and concentrates interest more on the accumulation of the wealth and the bettering of industrial processes than on its distribution and consumption.

I hope it has now been made clear that the traditional interpretation, the historical interpretation, the social interpretation, and the idealistic interpretation of current events are practically the same. They differ from one another only in the degree that the idealistic transformation of thought has taken place. They all strive to influence the present and to improve human conduct through the study of past examples. The blending of traditions accomplishes this result, and hence tradition and history pass over into idealism by easy stages. Economic practice becomes tradition and tradition is restated until it is transformed into institutions, ideals, and social

principles. All this helps to make good conduct, but it is not a safe basis for prediction.

We cannot accept this traditional interpretation because tradition has been transformed by its growth. Still less can we accept an "economic" interpretation of current events because other than economic causes have helped to shape the present. The "all economic" or material interpretation of the present is defective because it neglects the effect of heredity and tradition on human conduct. The traditional or idealistic interpretation is likewise defective because it neglects the changes in economic conditions that make present sequences in events different from those of the past. Through the economic interpretation of the past the similarities and differences in present and past conditions are brought to light and the limitations to social prediction become manifest.

Nor is economic interpretation the method of economists as opposed to that of historians and of sociologists. Economists are bound as tightly as other thinkers by the chains of tradition. The rapid development of the Ricardian tradition is evidence of this. Nor is the new thought exclusively the work of economists. Von Ihering's *Evolution of the Aryan* stands the tests of economic interpretation better than does the work of Karl Marx. The theory of exploitation is the transformation of a class tradition into a form of idealism. This is of social importance, but not an economic law.

I give below some of the canons of economic interpretation, so that the validity of social creeds may be more easily measured. Economic interpretation tests these as science tests the miraculous in nature.

(1) Like economic causes produce like social effects.
(2) Progress depends on the increase of resources.
(3) An economic interpretation of past events must precede an historical interpretation of present events.
(4) Economic interpretation must precede social prediction.
(5) Social causes have economic antecedents.
(6) A study of economic epochs should precede a study of nations and races.
(7) Traditions blend which in their union strengthen and elevate each other.
(8) The greatness of men is due not to their moments of inspiration, but to the conflicting disciplines to which they have been subjected.

Much of the present confusion of thought would be obviated if it were kept in mind that progress depends on an increase of resources. In the study of an epoch or nation it must first be determined whether resources are decaying or improving. The decline of Rome was inevitable as soon as Italian resources fell off. Rome could extend its rule by conquest and make individuals and even

armies wealthy by plunder, but this burden on the conquered races helped their decline, which in turn further weakened the Roman State.

It was the long, steady pressure of decaying resources that crushed Rome, as it has crushed other nations similarly situated. Immorality and extravagance hurt to-day, but they have little permanent influence if the creation of wealth has gone on unimpeded. Each age brings up new men under the discipline of work, and their descendants give tone to the succeeding age. Should they drop out through wrong-doing, their places are filled by a new generation of workers, as new blades of grass come in the place of those cut. Give rain and we have grass; give work and we have men.

We need not go beyond the domain of geography to seek the error in the social and historical lore that is made the basis of current prediction. The region occupied by the Western civilizations of the Old World is divided into two parts, by the Alps and the chains of mountains that extend eastward. Asia Minor, North Africa, and the south slope of Europe are thus one geographical unit. The north of Europe forms a similar geographic unit. The Gulf Stream gives up its moisture to the northern plain. The westerly winds in the central basin are dry, bringing little moisture from the ocean beyond. Droughts are common and the source of great misery. The vast northern plain suffers from an excess of rain and from a lack of sun. Its crops, like the cereals, can stand plenty of rain, while root crops prevail in the central basin where heat and sun are abundant though rain is deficient. I need not go into details to show that these two regions stand in marked contrast, and that scarcely a physical feature which is important in the one prevails in the other. If economic forces count, these two regions should produce radically different civilizations, institutions, and social traditions.

The German differed essentially from the Roman when the two civilizations came in contact. But as the southern civilization proved superior, the traditions, institutions, and culture of the south were impressed on the north, and so thoroughly has this work been done that the imposed institutions and social traditions now seem a second nature. We have so completely exchanged ancestors that we think in the terms of the Roman, Greek, and Semite rather than in terms of the German. We accept as precedents the traditions developed to meet the conditions of the dry, hot south and forget to test them by a comparison of the two environments. Roman precedents are good in North Europe only in so far as their physical characteristics are the same.

Viewed in this way it will be seen how completely predictions based on the conditions of the south fail when applied to the north. The history of the southern regions shows a succession of races and

nations, each having a period of prosperity followed by a period of decay and a final disappearance. That nations have a period of youth, manhood, and decay — that the history of each individual life is repeated in the history of nations — is a view based on the economic conditions of Southern Europe and Western Asia.

But is this law of the rise and decay of nations a general law or a peculiarity of the region where southern civilization arose? It is plainly a local law. I have only to show that the slight rainfall of these regions has geologic causes in order to demonstrate that the decline of nations was due neither to social conditions nor failings, but was the inevitable result of changed climatic conditions.

Progress is due to the increase of resources; decline in civilization follows a failure of resources. A tragic end awaits a nation cramped by a reduction of the food supply. There are many ways of proving this, but I shall take a bold one that demands some imagination. The land masses of this central basin seem in early historic epochs or in those that immediately precede them to have risen to higher levels, converting many depressions occupied by lakes and seas into sandy wastes. Lower the level of the Sahara by five hundred feet and it would become an inland sea. When this region was covered with water the southwest winds were moist and carried abundant rains to the eastern plateaus. Arabia and Persia could then have lakes where now there is only blowing sand. The high lands would have a verdant foliage and be fit centres for growing nations.

When civilized men gained a foothold in this region the elevation of land may have been completed and the decline in rainfall begun. The uplands would so become fine grazing land and the lowlands would be centres of agricultural activity. Careless tillage and the destruction of trees would increase the natural denudation of the uplands and render them less habitable. This would force an unrest in the upland population, a movement to lower levels and a struggle for their possession. This contest, once begun, would be a perpetual process. Each downward movement of population would develop a new civilization, enduring until another unrest in the highlands brought a new horde of barbarians to destroy it and in turn to develop a new one. Region after region was thus denuded and civilization after civilization fell before the steady pressure of the upland races forced out of their habitat by the increasing dryness. A decreasing rainfall and an increasing denudation of land forces nations to move rapidly through the various stages of progress and in the end crushes them through the lack of resources.

There is, therefore, a long series of these short-lived nations, each repeating the other's history, because back of them were the same processes of growth and decay. The tradition of these sequences is the basis of the maxim that history repeats itself, while

the struggles to resist invasion by developing the hero idea gave rise to the modern notions of character. But the law is neither an historical nor a social law; it is merely the pressure of geologic changes on the civilization of a given region. Outside of the great central basin the law fails of verification because the climatic conditions are altered.

In marked contrast with these climatic conditions are those of the great northern plain of Europe. A rank vegetation keeps up the fertility and usually replaces what is lost. Each generation sees North Europe more productive and capable of supporting a larger population. Growth and stability will thus be a characteristic of the northern nations so long as the Gulf Stream flows. They have a perpetually improving economy, giving a firm basis for enduring social institutions.

No nation of North Europe goes down as the southern nations went down one after the other. A reconstruction of national boundaries often takes place; but with each reconstruction comes a period of renewed growth and prosperity. France has been the only apparent exception. Instability in government followed its great social revolution and gave to traditional views a new life. But order and stability have again been restored and the steady progress of France compares favorably with other nations.

If this be true the traditional view of the course of history needs correction and the mass of southern traditions imposed on northern nations by the new civilization that Christianity brought must each be tested by means of a comparison between the conditions under which it arose with the conditions that now prevail. The narrowness and defects of southern traditions will then be exposed and the ground cleared for a new view of history based on the conditions and experience of North Europe.

The realization of this great break in economic conditions, due to the transference of civilization from the south to the north of Europe, and the consciousness that many of our cherished traditions are abnormal, help us to a fruitful study of present conditions. A new break of similar magnitude has been made by the transference of civilization to America.

The civilizations of North Europe are enduring because their basis in climatic conditions is secure; but while enduring, they are narrow and cramped because their food resources are so limited. A wet, cold climate is good for grass and the cereals, and therefore bread and meat become the standard of life. The pressure of population has raised their price and kept the common people poor and dependent. Under these conditions a civilization could continue, but not without great abnormalities due to high prices. All these restraints were escaped in America, and for the first time a natural

level of food prices permits a normal development of civilization. Not only has America a better food supply than Europe, but the barriers to commerce have been so far broken down as to make the food supply of the whole world available at our great centres.

A new civilization is now possible to which those of the past can offer few analogies. Individual struggle has practically ceased. A sufficiency of food comes to the unskilled laborer, and the increase of population, even when augmented by a million immigrants a year, does not increase the pressure. We have higher standards to-day with 80,000,000 people than we had two generations ago with 40,000,000 people, and we could support 300,000,000 with as great ease and with as little individual struggle. Surely this is a break of a magnitude that the world has never before seen, and should be followed not only by a great uplift in social standards but also by changes in traditions, institutions, and ideals that will separate our civilization from its predecessors and give it not only perpetuity but breadth.

The facts on which this judgment rests are so familiar that they will, I fear, make dry reading. Our resources and growth have been often pictured, but men do not realize what they mean. They think of our traditions, institutions, and ideals, transferred in the main from other civilizations, as unchangeable possessions, and fail to see the growth and transformation through which all things social go. I must repeat these familiar facts, however, to make my point as to the present importance of the economic interpretation of history.

The Great Central Plain of North America is a vast storehouse of food. We have the wheat that Europe has, but we have it more abundantly. We have more extensive grazing regions, and with corn for fodder have superior facilities for raising cattle. Pork never took its proper place in the diet of the world until the great cornfields of the West came into existence. Of all these staple articles of ancestral diet vast quantities more might be raised without putting undue pressure on the soil. Our warm summers and clear climate make root crops even more productive than the cereals. To think of the changes in diet that the cheapening of sugar has made is to realize in a measure what an increase of population will follow the full utilization of available root crops. We have combined the resources on which the civilization of North Europe depends and those which made the ancient civilizations of the South. The emigrants from South Europe find here a possible diet like that of their home countries, and in its use they evoke qualities in our soil that lay dormant as long as the Northern races were fed from it.

In addition to these home possibilities the nearness and access-

ibility of the semi-tropical regions, of the West Indies and Central America, make many new foodstuffs available and in quantities practically unlimited. Measured in food, these regions can support as great a population as can the United States, and cost is less than that of the home supply. We need only a fruit and a vegetable-loving population to utilize these new food materials, and it is at hand in the emigrants from Southern and Central Europe, who already have habits and traditions favorable to a vegetable diet. Surely, then, their influence will cause a break in Anglo-American traditions and a nearer approach of the American diet to the possibilities of American conditions.

This food supply could not be made available nor could the absorption and assimilation of Southern races take place without the recent cheapening of the cost of transportation. Even delicate fruits can be carried halfway round the world at a reasonable cost, and with ice and cold storage they can be evenly distributed throughout the year. The new diet can therefore have a freshness and variety superior to any before available.

Coincident with this improvement in food and transportation have come social betterments that have lengthened life and made people more healthy. Great scourges like the medieval plagues are no longer possible, and fevers are so well under control that they have ceased to be grievous afflictions. A normal length of life is for the first time possible to the working population; and when traditions of hygiene and right living have developed among them, suffering from ill health will be a negligible quantity.

To attain all these advantages, a rapid increase of capital is necessary; and fortunately the growth of the saving instinct has kept pace with other improvements. A slight change in the rate of interest calls forth capital enough for our great enterprises. There is as little limit to its growth as there is to our other resources. When it is freely used by healthy, well-fed men, civilization enters a stage distinct from any of its past forms.

Food, health, capital, and mobility of men and goods are the four essentials to progress. All of them are now abundantly supplied and capable of indefinite increase. Must not this be the basis of a great social transformation, changing our institutions, habits, and traditions until they establish a social adjustment as complete as the present economic situation permits? If there was a break in traditions, institutions, and ideals when civilization moved from Southern to Northern Europe, a still greater crisis is before us when American civilization matches American possibilities. History repeats itself when economic conditions remain static, but the crude application of its maxims aggravates evils when economic transformations are in progress.

The picture I have drawn of economic changes will not be complete without a third illustration of the limits of social prediction. Progress having hitherto been on race lines, tradition emphasizes the idea of race supremacy. Sharp distinctions have been drawn between nations and their habitats; and one's own kindred are assumed to be right, while strangers and enemies are wrong. The mountaineer is pronounced superior to the plainsman, the countryman to the urban dweller, and the men of cold regions to those of hot climates. Buckle's contrast between the emotional East and the intellectual West is a Western tradition without geographic truth. Just as baseless is the dictum that political stability is impossible south of the frost-line.

It is also claimed that civilization must be Teuton or Anglo-American in racial quality, and that its environment is a narrow strip of the temperate zone in North Europe and America. But in fact the barriers to the expansion of civilization on which these traditions rest have been swept aside. More than ever civilization is economic, and far more extensive than before are the geographic bases of material prosperity. The essentials of progress — security, food, health, capital, and mobility of men, of goods, and of thought — are now found in many regions outside the wheat-belt of the north temperate zone, and other races than the Germanic possess the combination of essentials and benefit by it. The expansion of civilization to new places and races has begun, and will not end until the level of Southern and Eastern life has been raised to that of the North and West. Cuba and Porto Rico have to-day better conditions than Virginia had two centuries ago, and in Japan is a happier combination of essentials than could have been found in Elizabethan England. Surely if England and Virginia could make men under their conditions, Japan and Cuba can likewise attain the level of our present civilization.

Great as is the good that flows from the bettering of economic conditions, a still greater springs from race assimilation and the blending of traditions that succeeds economic contacts. Society is perpetuated through its traditions rather than through its heredity. Mobility of goods is less necessary to a general advance than is mobility of thought. By contact we shall raise our own ideals and gain as much as the Eastern and Southern races will. Religion, morality, political institutions, public law, and literature will all be revivified, lifted, and freshly idealized.

The intellectual and national awakening of the races of Southern and Eastern Europe and of Japan shows the presence of a leaven that will transform their static traditions into dynamic forces more vivid than those of the Anglo-American. And the moral awakening in England and America which demands fair play and justice for

men of other races and lands is an index of a broadening and elevating influence that will delocalize Anglo-American traditions and make us truly cosmopolitan. Such interruptions and transformations of tradition narrow the realm of social predictions as strictly as do the modifications of economic conditions.

The present crisis demands a knowledge of the transformation in tradition when breaches occur between it and the economic situations in which it arose. But we cannot safely go into an unknown future with a mere knowledge of present economic conditions. Nor can we safely follow the traditions of the past formulated as the basis of historical and social prediction. We must study the past through the present and the present through the past. This is economic interpretation, and it is a vital present need.

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DEPARTMENT IV — HISTORY OF LAW

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(*Hall* 5, *September* 20, 11.15 *a. m.*)

CHAIRMAN: HONORABLE DAVID J. BREWER, Associate Justice of the Supreme Court of the United States.
SPEAKERS: HONORABLE EMLIN MCCLAIN, Judge of the Supreme Court of Iowa, Iowa City.
PROFESSOR NATHAN ABBOTT, Leland Stanford Jr. University.

HISTORY OF LAW

BY EMLIN M'CLAIN

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ANY attempt to outline a history of law with the view of presenting a connected account of its development as a branch of human knowledge must be preceded consciously or unconsciously by an elimination of allied or analogous matter, and by a differentiation of law from other sciences. For the subject has intimate relation with every phase of man's social activity and intellectual development; with religion, ethics, and morality; with institutions, government, and legislation; with race characteristics and their evolution; and its records form an important part of the material with which anthropology and ethnology are concerned. Such elimination and differentiation are necessary not only in order to determine the subject-matter and arrive at a definition of law, but also in order to secure a starting-point from which its development may be traced. Among many primitive peoples law is not clearly distinguished from religion, and its administration is found to be in the hands of the priests. Not only are legal proceedings accompanied by religious ceremonies, but the exercise of the judicial power is conceived to be within the scope of the sacerdotal functions. In Rome, for instance, the interpretation of the law was a function of the Sacerdotal College, first as a fact, and later perhaps only as an empty fiction down to the end

Differentiation and Elimination.

Religion and Law.

of the Republic, that is, until about the beginning of the Christian era, when Augustus Cæsar added to his various other offices that of Pontifex Maximus, and thus became the supreme law interpreter as well as the supreme law-maker. It clearly appears that the judicial functions of the priestly office had not fallen into complete disuse during the third century B. C., when the first plebeian who attained to the position of Pontifex Maximus announced his readiness to answer legal questions to all instead of confining his exposition of the law to such actual cases as might be brought before him.

Morality and Law.

The primitive relations between religious ceremonial observances and legal proceedings cannot be regarded, however, as purely accidental, or as resulting alone from the superior education and learning of the priests. There is, undoubtedly, some deep-seated connection between the religious and legal significance of words which are common to religion and law, represented in our language by such words as "right" and "just" and "lawful." There was the same suggestive relation between "fas" and "nefas" on the one hand and "jus" and "lex" on the other among the Romans. And in perhaps all modern languages there is the ambiguity growing out of the use of words of the same import, as "recht" among the Germans, and "droit" among the French. This connection is hardly to be explained as growing out of the resort to the superstitious or religious nature of men for the purpose of securing their action in legal affairs according to some other rule or guidance than that of self-interest, prejudice, or partisanship. Such assistance the law has in all ages sought in religion. Performance of contractual obligations was secured among primitive people by giving to them a religious sanction. In the Middle Ages compurgation was a recognized method of arriving at the truth in the determination of legal disputes, and in modern times we seek to induce witnesses to tell the truth by the administration of oaths, and in the same method we endeavor to influence jurors and judges to perform their duties uprightly and without fear or favor.

Ethics recognized by Law.

Ethics and morals remain associated with law in modern conceptions. Although it may be conceded that the original function of the state in regulating human actions which affect the relations of individuals to each other is to secure the prevalence of social order, nevertheless the general obligation to so administer the law as that on the whole moral right and justice shall prevail is a conception too deeply seated to be ignored. Nor has the general recognition of this obligation ceased to have legal significance. It is a popular belief that law was at first simply morality, and that through undue attention given to forms and technicalities of procedure the two have become widely separated

and inconsistent in their aims. The historical fact is that technicality and formality have been marked characteristics of the earliest administration of law among all peoples, and that the tendency has been universal so to modify and adjust the early technical procedure as that right and justice in a moral sense shall be done. Not only through legislation, but also by means of fiction and the introduction of equitable principles, law has been brought into a closer consonance with morality. Never before have bad faith and the resort to technical legal rules for the purpose of effecting that which is morally wrong been so strongly discountenanced in legal tribunals themselves; and never before have such tribunals been more zealous so to apply legal rules as to secure results which accord with ethical standards.

But distinct.

Notwithstanding the underlying connection in human thought between rights and duties of which law takes cognizance and those which are recognized in ethics and morality, it is evident, nevertheless, that until there is a clear and well-established distinction between law and morality there can be no ascertainable science of jurisprudence. Until the recognized aim in the administration of law is to apply rules which are sufficient to afford a reason for their application without regard to the ethical result in any particular case, there cannot be a science of law.

Administration and Law.

It is also apparent that there must be a differentiation between administrative and legislative functions on the one hand and judicial functions on the other before there is a science of law as distinct from a knowledge of the law. The sovereign or body exercising the power of sovereignty may still retain and exercise the power to do right in particular cases and administer justice, but until controversies between individuals which are adjudicated under the sovereign authority are decided habitually if not universally by applying established and related rules of action and obligation, there can be no science of law.

Public Wrongs.

The necessity for the interference of the state in private controversies arises probably from the obligation of the state to maintain peace and order, and perhaps the very first occasion for the exercise of that function would be in the suppression of the turmoil and the insecurity existing where the individual is left to his own powers and resources, or that aid which his kindred may feel bound by custom to afford him in the protection of his supposed rights. The blood-feuds and the violence incident to a resort to self-help could not be suppressed until some substitute was afforded. This is, perhaps, a sufficient explanation of the characteristic provisions not only in the laws of early Teutonic races, but also in the early laws of other races, as to the amount to be paid as weregeld, or under some similar name by the wrong-

doer or those responsible for his conduct to the injured party or his relatives for acts of personal violence. The conception of a public wrong which the state for its own interest should punish was, however, not lacking in the earliest social organizations, and the modern enlargement of this conception of the duty of the individual to the public as a whole represented by the state is an illustration of the ever increasing complexity of social relations. But it is evident, however, that until the governing power, whatever it may be, in discharging the duty of determining controversies between individuals, and redressing injuries to the public, has come to recognize a general obligation to proceed in accordance with established rules, and not simply in the exercise of an indefinite power to govern, there can be no science of law.

Legislation and Law.

A distinction between the power to make laws and the power to modify or add to the law is also essential to a science of law. The English school of analytical jurists, which is perhaps the only distinctively English school of jurisprudence, seems to have ignored the difference between the aggregate body of the laws and the law. So long as the law is conceived of theoretically as the aggregate of the commands of a sovereign power, no necessity becomes apparent for the recognition of any such difference. But the practical distinction between the customary law and the law composed of conscious legislation has been appreciated under every legal system at an early period in its development. The science of law as distinct from the sciences of politics and of government can, however, have no existence until the law is recognized as something quite essentially different from the aggregate body of legislation. The exercise of legislative power in the process of modifying and adding to the law has other motives and proceeds along other lines than those which are prominent and controlling in political and governmental science.

Customary Law.

On the other hand it is clear that the mere existence of a body of customary law does not connote a science of law. While the administration of justice remains in the hands of local magistrates or bodies administering the customary law without further supervision than that resulting from the right of appeal to a central power, which interferes only to prevent injustice in particular cases and without applying any system of rules and principles to which the inferior and local judiciary is required to conform, there is no system of law. The Anglo-Saxon period in the development of the English law furnished an apt example, and it was not until the king's justices exercised the customary power of administering a system of law which was regarded as the king's law that there came to be a scientific jurisprudence.

Another suggestion seems pertinent here. The history of law

is a wholly different thing from the history of a rule or principle of law, or of a particular legal institution. It is always very interesting, and may often be profitable, to trace backward the history of a rule of law or a legal institution to its original conception, or to trace downward the development of the earliest conception formed of any rule or institution to its modern status. In whichever method such investigation is pursued there is great danger that we may mistake mere analogies due to similarity of social conditions or race characteristics for the derivative relation of cause and effect. Even an analogy, however, if carefully ascertained, may prove to be interesting and instructive. But the history of law does not consist of the history of the various rules and institutions with which jurisprudence is concerned.

Law and Rules of Law.

Out of the earliest conception of science as the aggregate of human knowledge, and of philosophy as the reason or explanation of the relation of facts to each other, were differentiated branches of science, one of which was a knowledge of the law, and branches of philosophy, one of which was the philosophy of the law; and the art of administering the law was involved in this science and this philosophy. Legal facts taken into consideration in the administration of the law, generalized and arranged according to some system of supposed relation and explained by some assumed reason for their existence, became as thus arranged and explained a branch of human knowledge which could be designated by the term jurisprudence. That term might be applied to any aggregation of legal facts having some relation to each other; for instance, the facts of one branch of the law, such as the law of persons and of property rights, the law of admiralty or the law of the relations of nations to each other; or it might be applied to a knowledge of all the law recognized within a state or nation or race; or it might be applied to the law generally conceived of as including all ascertainable facts found to exist affecting the relations of human beings to each other anywhere so far as they are affected by or taken account of in the administration of the law, arranged according to some system and explained by some philosophy. The history of the development of jurisprudence regarded as a branch of general human knowledge and not related to the facts of a particular branch of the law, or a particular system of law, may properly be spoken of as the history of law, or the history of jurisprudence. If jurisprudence be described in the brief phrase of Dr. Holland as "the formal science of positive law," then the history of jurisprudence is the history of the development of that science. Until this science was so far differentiated from other sciences that it could be conceived of as a branch of knowledge dealing with a group of facts having an independent classification, and reasoned about as having an independent existence,

Science of the Law.

there could be no distinct history. This differentiation was only sufficiently completed to permit of a definite use of the term "science of law" when the relation of principles to each other was determined by a body of rules independent of, although not necessarily antagonistic to, those recognized by religion, ethics, and morals, enumerated and enunciated not arbitrarily by some law-maker, but explained by some rational process and developed according to some system of principles and administered by some authority recognizing in theory, if not in practice, the obligation to make the result of such administration conform to rules and principles thus recognized.

Starting-point for History of Law.

In order to fix the starting-point of the history of law as a distinct science, it is necessary to ascertain the first existence of such a branch of human knowledge. The unequal advancement of the human race accounts for the development of an organized social system in which systematic jurisprudence is recognized at an earlier stage in one group than in another; and by eliminating from consideration those groups in which there can be said as yet to be no science of jurisprudence in a distinctive sense as the term is now employed, and noticing that those groups in which such science has been achieved are so related to each other that the jurisprudence of the one can be assumed as having had some influence on the others, it will be found that a history can be written with a somewhat definite starting-point, and dealing with a somewhat consecutive and homogeneous development.

Begin with the Romans.

There can be little difficulty in eliminating from the field of our present view all of the so-called ancient races save the Romans. The law of the Hindus as illustrated by the Code of Manu, the Hebrew Scriptures, and the Koran are so essentially religious that they must be excluded from consideration in a discussion of the history of the law. The Babylonians and the Egyptians appear to have had no distinctive judicial system of administering the law. Even the Greeks, with all their advancement in art and philosophy, had no system of jurisprudence. With them the science of law had not yet been separated from that of politics and government. But among the Romans the law became a branch of human knowledge, having for its scope recognized facts, a reasonably well-ascertained arrangement, and a somewhat distinct philosophy. And such a conception of the law thus originating among them has not been lost sight of in the civilized world down to the present time. It may have been independently achieved among other Western peoples, but the development of the Roman civilization reached the whole Western world during the formative period, and no other system can be discussed without considering the influence of Roman civilization upon it. It is not assumed, on the other hand, that the Roman civilization was spontaneous, but what-

ever that people did derive from other sources came to them before there was a science of jurisprudence. If then we can ascertain the beginning of such a science among the Romans, we have a reasonably convenient and satisfactory starting-point for a history of law.

Twelve Tables.

It seems to be generally assumed that the brief Roman code known as the Twelve Tables, promulgated B. C. 452, 451 (303, 304 A. U. C.), constitutes the source and beginning of jurisprudence at Rome, and is therefore the first monument in the history of law; but this point is of sufficient importance to justify some deliberation.

Babylonian Code.

Such a code as that of the Twelve Tables was not a new invention of the Romans. A complete Babylonian code promulgated by Hammurabi, the sixth king of the first dynasty of Babylon, who reigned about B. C. 2250, and is identified with the Amraphel mentioned in the book of Genesis in the Hebrew Scriptures, has been recovered and translated, which indicates that at that time the Babylonians had reached a stage of development in legal notions not greatly different from that which existed among the Romans at the time the Twelve Tables were promulgated. In two respects, however, the primitive Roman code indicates conceptions more advanced than those entertained by the Babylonians, the Egyptians, or the Hindus. In the first place it does not purport to emanate from a divine source, and in the second place it recognizes the existence of the rudiments of a distinctly judicial procedure. In the latter respect it is more advanced than the so-called laws of Solon, the Athenian ruler in the seventh century B. C., from which some of its provisions are supposed to have been borrowed. It may be suggested as an interesting fact that the Teutonic codes, so called, which came into form during the Middle Ages and represented the social system which had previously existed among these tribes, are not very different in their subject-matter from the Babylonian, Egyptian, and Hindu codes. They picture a period of social development when the right of retaliation is being superseded by a system of money compensation to be paid according to a fixed scale for injuries to person and property. There are traces of this notion found in the Roman law of the time of the Twelve Tables, but that code suggests a social development which had gone at least one step further toward modern conceptions of personal and property rights.

Roman Conception more advanced.

Twelve Tables not Proper Starting-point for History of Law.

The Twelve Tables did not indicate, however, the existence among the Romans of some of the essential features of a scientific system of law. Here was a collection of laws, but not a body of law. Here was the conception of rules of conduct and obligation laid down on the authority of the state, not purporting to be derived from

a divine source, but no recognition of any connection between the written command and a preëxisting body of customary law to which the written law was added. There is lacking also any conception of law as the basis for subsequent development by interpretation and exposition.

Beginning of System of Laws among Romans.

Within the following three centuries, however, or at least before the end of the Roman Republic, all of these elements of a system of law had been added. The law became the subject of methodical discussion by learned men who made it a special study. It was administered by praetors who announced in their annual edicts rules and principles not directly derived from the written law, and which they would observe in their administration of justice during their respective terms of office. The praetor peregrinus was determining rights and obligations of those not subject to the civil law which governed Roman citizens, assuming the existence of customs and usages binding upon them without any express enactment, and a method of trial had been developed in which the rules of law applicable to the case were expounded and a judicial determination of the facts was secured. Whether we accept as satisfactory evidence of the existence of scientific jurisprudence the republication from year to year by the praetors in their annual edicts of the substantial portions of the edicts of their predecessors, thus establishing the existence of what may not improperly be termed judge-made law, or their propounding by formulae to the judex of the question of fact to be ascertained in order to determine the application in the particular case of rules of law previously announced by a jurisconsult, or the compilation by Sextus Aelius Paetus, Consul B. C. 197, of his Tripartita embodying the Twelve Tables, the interpretation thereof by the Sacerdotal College, and the forms of action appropriate for seeking legal remedies, as the final evidence of the existence and recognition of a system of law, we shall bring the starting-point of such a system within the two centuries before the Christian era, and probably within the earlier of these two centuries.

Two Characteristics.

It is not within the province of the present discussion to elaborate the details of Roman jurisprudence, nor to comment upon the characteristics of property and personal rights which were recognized. But something ought to be said of certain legal conceptions peculiar to the Romans which have profoundly influenced the historical development of law since their time. Of these, two may be selected as of special importance: first, that the Roman law was applicable only to Roman citizens, and second, that there was a system of law described by them as the law of nature furnishing a philosophical explanation for all human laws. The two conceptions are related apparently only in this, that the recognition

of the principle of personality rather than that of territoriality of law led to the discovery or investigation of the theory of natural law.

By reason of the conception of law as personal and not territorial, it was necessary for the praetor peregrinus to seek some other system of law than that applicable to Roman citizens on which to base his decisions in controversies between foreigners, that is, persons who were not Roman citizens. For it was only a citizen who could enjoy the property rights, sustain the family relations, enter into the contractual obligations, or avail himself of the judicial procedure recognized by the law of Rome. This theory of the personality of the law cut a large figure during the medieval age, and served as a marked distinction between the Roman system and the feudal system. The distinction may be of no great significance, for the rule of territoriality is now fully recognized in all civilized countries, not only as to the relations of individuals to each other and to the state under any particular system of law, but also as to the relations to each other of foreign nations and their subjects, but it will furnish an explanation for many difficulties and peculiarities developed in the study of the early Teutonic systems. **Personality.**

The notion that the praetor peregrinus must administer some other system of law than the civil law of Rome led to the assumption of the existence of a body of rules and principles which could be derived from the laws of other peoples, that is, the *jus gentium*. The first conception was the purely practical one that the controversies between subjects of other governments temporarily residing or transacting business in Rome ought to be decided according to the laws of the governments to which they were subject. Such laws would be their laws wherever they might be, just as the Roman laws were the laws of the Roman citizen. But it would be impossible in many cases between foreigners to find any law applicable to both, and the praetor was driven to administer in such cases a kind of general law, in fact, a system of equity; and he did it on the fictitious assumption, especially with reference to commercial transactions, that there was an established system of laws or principles common to all nations. Nowhere is the capacity of the Roman jurist to generalize without regard to facts and to build up a system on mere philosophical theory more aptly illustrated than in the assumption of a *jus gentium*. No praetor or jurisconsult or philosophical writer seems to have pretended to discover as a matter of fact the existence of any such system of principles, nor indeed to have made any investigation for the purpose of determining whether such a system existed among or could be derived from the laws of different nations. That the praetor peregrinus, in fact, **Jus Gentium.**

administered pure equity cannot be doubted. The anomaly of the situation was in his pretending that he was discovering and administering *jus gentium*.

Natural Law.

From the conception of a *jus gentium* it was easy to make the philosophical deduction of a natural law, that is, a collection of laws and principles which did prevail among men living together in a natural state free from the technical restraints of the Roman law. And again, it was an easy step to assume for the natural law some moral obligation, and that all laws, even the laws of Rome, ought to conform to it as nearly as possible.

Stoic Philosophy.

In this development of the theoretical conception of a law of nature from the practical assumption of a *jus gentium*, the Roman jurist seems to have been guided or at least assisted by the prevalent Stoic philosophy which originated in Greece with Zeno about B. C. 308, and was the favorite philosophy of men of learning and culture prior to the general acceptance of the Christian religion. The fundamental conception of the Stoic seems to have been that underlying all facts and occurrences is some reasonable explanation, and that by accommodating himself to the natural order of things the human being best adjusts himself to his surroundings, and most easily obtains the desirable condition of contentment and satisfaction. That there should be some such reasonable order and connection at the foundation of social phenomena, serving as a basis for jurisprudence so far as discoverable, is an assumption which does not appear to us in modern times as extravagant; and while the Stoic philosophy as a matter of fact explains nothing, it does represent a view which great numbers of intelligent people still take as to their relations with nature and their fellows.

Consequences of Recognition of Natural Law.

When the theory of a natural law as a basis for a system of jurisprudence passed from the phase of explanation to that of obligations, it started upon a career that has been accompanied with many illogical and harmful views. To say that the positive law ought to conform to some so-called natural standard is revolutionary, for the simple reason that there is no means of ascertaining any such standard. What is naturally right must necessarily vary with the conceptions entertained by each school or faction or individual. And to say that a law or principle of law is wrong and should not be obeyed or recognized because it does not conform to some such assumed standard is to introduce the same kind of confusion between law and morality which existed before there was any differentiation of jurisprudence from religion. As a philosophical assumption the law of nature is harmless, for any school or collection of individuals may agree as they see fit upon an explanation of social phenomena, though it is a little

difficult to perceive now the benefit even from a philosophical standpoint of an assumption for which no foundation of fact can be ascertained. But to make such an assumption the basis of criticism of or resistance to positive law is to introduce disorder into the social system, a result wholly inconsistent with the spirit of the Stoic philosophy.

Nevertheless, it is in the assumption that the civil law as it was finally developed at Rome is founded upon and embodies the natural law, that superior excellence has been claimed for it by enthusiastic students and advocates. There are sententious and catching phrases in the *Institutes* of Justinian with reference to law and justice borrowed, of course, from early writers, which have commended the civil law to those who like to philosophize about jurisprudence. It seems not to have seriously occurred to the advocates of the superiority of the civil law system that it should be judged by its practical results rather than by its theories, and that the notions of right and justice which are expressed in general phrases by the expounders of the civil law are so far common human property that they may be found tersely and cogently set forth by Hammurabi or Confucius or Moses or Mohammed.

Natural Law assumed by Roman Jurists.

The conception of a *jus gentium* has been useful in the development of the principles to be applied in private international law, and the adaptability of the assumed natural law as furnishing fundamental principles for the exposition of public international law has led to a general acceptance in international law, public and private, of the civil law as containing the law of nature. But it is doubtful if any substantially valuable portions of the recognized international law would have been wanting had there never been a civil law system or an assumed system of natural law. Public international law has been developed like any other system out of usage, and consists of the rules and principles in accordance with which nations maintain relations to each other, just as customary law is composed of like rules and principles in accordance with which individuals are related to each other in society. It is the general consensus as to what such rules and principles ought to be so far as it has been ascertained and in an indefinite way accepted.

Uses of Jus Gentium.

The assumption of a law of nature has had its most potent influence, however, in politics rather than in jurisprudence. It has furnished arguments and justification for the overthrow of tyrannical and unjust governments, and has made easy the way for the extension and practice of personal liberty. Conceptions of natural rights upon which governments should not infringe, and of the social compact

Natural Law and Social Compact Theories in Politics.

upon which governments rest, have been potent forces in the establishing of constitutional limitations, written and unwritten, throughout the civilized world, and in compelling arbitrary governments to adopt constitutional forms in accordance with which their powers shall be exercised. The various declarations and bills of rights found in the constitutional history of Great Britain, the United States, and France since the beginning of the seventeenth century have contained unmistakable traces of the theory of the law of nature as embodied in the natural rights and social compact assumptions. But it may not be out of place to suggest that when a fact is established, a theory to explain it may easily be found, if not in one philosophical conception, then in another, and the development of the conceptions of individual freedom and that governing bodies exercise only a limited and delegated power can be traced among the Anglo-Saxons to a time when theories of natural rights and social compact were absolutely unknown. It may be seriously doubted by a student of comparative constitutional law whether the history of governments and institutions in the Western world would have been substantially different had no such explanation as natural rights and the social compact been invented.

Roman Law at Close of Republic.

The Roman civil law at the end of the period of the Republic consisted of legislation of various kinds, added to a body of customary law which had attained some measure of recognition by embodiment in the praetorian edicts, and expositions by the jurisconsults already speaking with quasi-public authority, although their designation as official organs of the state was not made until a later period. This was the golden age of the civil law, and to the spirit which was infused into it during this stage of its development may be credited the intellectual conquest of the civilized world when the darkness of the Middle Ages was dispelled by the dawn of the Renaissance. But during the twelve intervening centuries the civil law of Rome cut a great figure in the world's history as the result of the conception, first generally entertained during the Empire, that all law is based directly on the authority of a ruler. And the practical result of that conception was codification.

Codification.

The codification of the Roman law under the Emperors was an important step in its history, and of the greatest interest in connection with the general development of jurisprudence, on account of the light which it throws on the nature and effect of a like process in other systems of law. But it is of historical significance also because it was the Roman law in a codified form which was extended over Europe and exercised an influence on the development of jurisprudence among the Teutonic peoples.

The process of codification under the Empire was simple. The

first necessity impelling to it was the practical one of bringing together the formal edicts, decrees, and constitutions which had been promulgated as, and constituted the body of positive legislation. **Process.**

The first compilations of this character were made under private authority during the fourth century, and are referred to collectively as the Gregorian and Hermogenian Codes. But the first official compilation was that of the Emperor Theodosius II, who in 429 A. D. established a commission for the preparation of such a compilation, although the work was not actually promulgated until 438 as the result of the labors of a new commission. As compared with the subsequent compilation of the whole law by Justinian, which is known under the name of the *Corpus Juris Civilis*, the code of Theodosius was crude and primitive. There was no effort in its preparation to do more than put in authoritative form the laws as distinct from the law. Nevertheless, the Theodosian Code is of far more significance as affecting the first impetus toward systematic jurisprudence in Europe than the *Corpus Juris Civilis*, for upon it were founded the so-called barbarian codes of the various Teutonic tribes who invaded and appropriated to themselves not only the most of the territory over which the authority of the Western Roman Empire had extended, but also to a large measure the civilization which had been developed at Rome. **Early Examples.**

The process of codification, however, was carried much further. The emperors in absorbing, not only the general power of legislation, but the whole of the power of expounding and administering the law, arrogated to themselves every function of jurisprudence. They consolidated the praetorian edicts into one perpetual edict to which the imperial sanction was imparted, and thus combined judge-made law with written law, and they thereby brought into the civil law the results of the recognition of the *jus gentium* and the law of nature which had been developed out of the exercise of jurisdiction by the praetors. Roman equity became merged into Roman law, and so jealous was the Imperial authority of any infringement of its prerogative as the source of law that exposition was confined by express command to certain designated jurisconsults, who alone were allowed to make *responsus prudentium*. The impotence of the sovereign power thus completely to shackle the development of law by means of exposition was illustrated in this attempt, for some of the most illustrious works of Roman jurisprudence were written by those who never received the Imperial authority, and the labors of unofficial jurists have been as fully accepted in subsequent ages as constituting a part of the Roman law as those of the official jurisconsults. **Under the Empire.**

The culmination of Roman codification was reached under Jus-

tinian, who as ruler of the Eastern Empire, with his capital at Constantinople, but also with jurisdiction over the Western Empire, which was for the time being not subject to his actual authority, between the years A. D. 529 and 534 caused to be prepared his Code proper, similar in scope to that of Theodosius, with, however, an attempt at methodical arrangement, and also the *Pandects* or *Digest*, a compilation of the authoritative expositions of the law, and in addition the *Institutes*, an elementary work expounding the theory and principles of the law. These works constitute together the final historical monument of the Roman civil law as the judicial system of an existing government. They were prepared by Tribonian and his associates under the Imperial command, but they embodied the results of a development of law by abler and more original minds.

Justinian's Codification.

By the promulgation of the *Pandects* Justinian sought to convert effectually that part of the law which did not already rest on the Imperial authority into written law, and to exclude the possibility of further reference to other authority. It was forbidden to supplement the official text with annotations or explanations, and there was theoretically no room left for further development, save as the Imperial power should be formally exercised in making additions or amendments.

Codification ends Development.

The theory that a system of law can thus finally be reduced to authoritative formal statement of rules and principles which shall be applied to cases as they arise in judicial tribunals, without other assistance than that furnished by the interpretation of the text taken as a whole, has been a favorite one wherever the civil law system has been adopted. In the present German Code it is expressly provided that "the opinions of law professors and the views taken by prior judges shall not be in any way considered in future decisions"; and in the *Code Napoléon* the judges are prohibited from pronouncing general views of law in the cases which are submitted to them; while in Austria the consideration of general principles is expressly excluded by a provision prohibiting the application of the customary law. In fact, by the civil law theory of codification, the further development of the law is taken out of the hands of jurists and placed entirely within the domain of political science. It is needless to say to any one familiar with the actual truths of modern law that such a theory cannot be worked out; for judges, even in countries where there is a final and complete codification, must inevitably take notice of the prior decisions of the courts in analogous cases and seek enlightenment for the interpretation of the law in the writings of those learned men who have attempted to expound the principles and to illustrate them by reference to cases real or hypothetical. The fundamental

Attempt to make Codification Final.

difference in this respect between the modern civil law and the common law is not that further development in the former has been rendered impossible while it continues in the latter, but that in the latter the material for such development is officially provided and its use distinctly authorized, while in the former there is no recognized rule in accordance with which such material may be preserved or made use of and the results of the development remain obscure until, after the lapse of a long period of illegitimate change, a complete revision of the law and revolution in the system of jurisprudence become necessary.

Bentham's School.

The Justinian theory of codification is more rational than that entertained by Bentham and his school in England in this, that Justinian sought simply to embody in authoritative form the results of the legislation, interpretation, and exposition within the entire field of law; that is, he proposed to represent in his compilations the existing body of the Roman law; while Bentham proposed to substitute for the body of the existing English law a system built up from his own individual conceptions of what the law ought to be. It is easy to see that Bentham's theory was wholly impracticable and visionary, and that such codes as he proposed could not possibly cover the field of jurisprudence or be other than disastrous in the practical administration of the law from the very moment of their enactment. Such fragmentary codes as were drafted by him are brief and inadequate condensations of the branches of the law which he attempted to cover, with such changes as in his judgment were thought to be necessary. Such a conception of jurisprudence as a system could have been entertained only by one unfamiliar with it either as an art or a science.

Reforms by Means of Codification.

Bentham and his school greatly benefited the English law by agitation for reforms which were needed and which have been accomplished largely through the more judicious labors of others. The theory of law which he and his successors entertained has not in the least affected the science of law in England or elsewhere. The impetus toward codification which has been so marked in England and America during the last century has resulted in an improved system of judicial procedure, and in the revision of the criminal law so as to bring it into harmony with modern conditions. It has also resulted in reducing to more concrete and homogeneous form the rules and principles applicable to some other branches of the law which for practical utility have been rendered more certain and more easily ascertainable. But the practice acts, the criminal codes, and the codified laws of partnership, sales, and commercial paper have furnished simply a new starting-point for interpretation and exposition. The spirit and underlying conceptions of the law of England continue as before.

Intelligent legislation will henceforth be even more potent as a factor in the development of the common law than it has been in the past, and indeed it now constitutes the most suitable channel through which substantial change may be effected. But jurisprudence will never be merged into political science, and the law as a whole will never be reduced to conclusive written form either in the countries where the civil law has been accepted, or much less in those which accept the common law.

Subsequent History of Corpus Juris of Justinian.

The futility of any attempt at final codification is illustrated by the subsequent history of the Justinian *Corpus Juris*. In the East it was unable to secure full recognition as an embodiment of the Roman law, which had been in a somewhat unscientific but rather practical way compiled in the so-called Syrian code fifty years earlier, and which furnished the foundation for the subsequent legal systems, such as they were, recognized in the Levant. Soon after the death of Justinian his *Corpus Juris*, translated into Greek, became the subject of further exposition, which with additional revision was embodied in the *Basilica*, compiled in the ninth century and generally accepted as the basis of the law throughout those regions in which the Greek branch of the Christian Church became predominant.

Survival of Theodosian Code.

In the Western Roman Empire Justinian's *Corpus Juris* was formally promulgated, but for practical purposes it did not supersede the crude collection of the written law already referred to as the Theodosian Code, and it was not until the revival of learning in the twelfth century that it exercised any marked influence on the jurisprudence of Western Europe.

Revival of Study of Justinian's Corpus Juris.

The recovery of a comparatively complete manuscript at the siege of Amalfi in the year 1335 is supposed to have inaugurated a new era in the history of law; but though Blackstone's assumption that the *Corpus Juris* was then rediscovered (a popular error which he accepted from learned writers on the civil law) has been generally discredited, it nevertheless remains true that about this time the study of the Roman civil law as a distinct system was revived, and became an important element in the advancement of the jurisprudence of the Western world, and that the *Corpus Juris* furnished the basis of this renewed study.

Effect of Teutonic Invasions.

The six centuries intervening between the completion of final Roman codification and the revival of the study of the Roman law at the seats of learning in Europe and England were filled with the confusion and disorder incident to the incursions of the Teutonic peoples into Roman territory, and no further development of jurisprudence can be traced. But many events happened during that period which are of great

significance in explaining the course of the subsequent history of the law in the states of Northern Europe and in England.

Barbarian Codes.

The characteristic feature of this period was the promulgation from time to time of the so-called barbarian codes. At the beginning of the sixth century and before Justinian had even formulated his plans for the codification of the Roman law, and within less than a century after the completion of the Theodosian Code, the second Alaric of the western division of the Goths, and Theodoric, the great ruler and leader of the eastern division, each promulgated compilations of laws founded on the Code of Theodosius. Theodoric's compilation seems to have had no permanent effect, for his empire went to pieces soon after his death, leaving no permanent results as affecting the legal history of the people over whom he ruled. But the compilation of Alaric under the name *Breviarium* was for centuries the law-book for Western Europe. Later in the sixth century some codes were compiled under the rulers of other tribes who had come within the limits of the Roman Empire, the most important of which were the codes of the Burgundians and the Lombards.

Barbarian Roman Codes.

In some of these codes it is expressly indicated that they were for the government of the Roman people, that is, the subjects of the Roman Empire whom the invading barbarian tribes had subjected and were attempting to govern. The Goths, for instance, or the Lombards, did not look upon themselves as accepting the laws of the territory into which they came; but on the contrary they considered that they brought their own laws with them. Conceiving that these laws were applicable only to their own people, their rulers attempted to make compilations of laws based on those which they found in existence in the Roman territory in accordance with which the Roman subjects should continue to be governed. And for this purpose they had resort to the Theodosian Code, so that it is apparent that the barbaric Roman codes do not include the body of the Roman civil law as represented by the *Corpus Juris*, especially the *Pandects* or *Digest*, that most important part composed of excerpts from the writings of jurists.

Teutonic Codes.

But not all of the barbarian codes are of this character. A stage in the development of the Teutonic tribes had been reached similar to that under which the Twelve Tables were promulgated at Rome, and some of these codes are simply the announcement of legislation embodying or adding to the customary law of the tribe. Even the barbarian rulers who compiled Roman codes recognized the existence of the customary laws of their tribes as continuing in force for their own people, and there is little evidence that this customary law was to any considerable extent affected for some time by the contact with the Romans; but inevitably those

tribes which became permanently located within the territory which was fully under the dominion of the Roman civilization adopted the institutions, the language, and the laws which they found, accepting them gradually as substitutes for their own. The Teutonic invasion therefore had little permanent effect on the laws or institutions of the peoples of Southern Europe.

But in Northern Europe the situation was entirely different. The Salic Law which the Franks brought with them into territory which had been only partially subjected to the Roman civilization was wholly Teutonic and showed slight, if any, traces of Roman influence. It remained the law of France, substantially unaffected by the civil law, until the study of the *Corpus Juris* extended the knowledge of the Roman law into that region.

Salic Law.

In Germany there was from the earliest time of which we have any definite historical record a body of customary law represented by the Sachsenspiegel and Schwabenspiegel, first reduced to written form in the thirteenth century, which remained long unaffected by the Roman law. And wholly Teutonic also in origin and development was the body of the law of the Anglo-Saxons, the first historical monument of which may be said to be the Dooms of Alfred.

Sachsenspiegel.

The differentiation which took place between the development of Teutonic civilization in the north of Europe and a similar development in England must be largely attributed to the fact that the rulers of the Franks and other Teutonic tribes were attempting to extend and maintain their authority over the Romanized people of Southern Europe, and in doing so were brought into closer contact with the Romans than the Anglo-Saxons who had gone into England and there developed a civilization free from external complications until it had reached such a stage that it could not be fundamentally affected by them.

Anglo-Saxons.

The Teutonic codes, if they may be designated by a name which is misleading, as suggesting a stage of development which had not yet been reached, that is, the Salic law, the Sachsenspiegel, and the laws of the Anglo-Saxons are made up largely of provisions as to the compensation to be paid for injuries of various kinds to person and property. They suggest no conception of systematic jurisprudence; but they show the general prevalence throughout Northern Europe and England of a condition of society which culminated in the feudal system. Indeed, they may with some propriety be called the feudal codes as distinct from the Latin codes.

Teutonic Codes not Part of Jurisprudence.

The history of modern jurisprudence may be arranged under four divisions. That of Eastern Europe, including Russia and Turkey,

in which the Roman law as represented by the *Corpus Juris* of Justinian in some form has remained the basis of the law to the present time, for even the Mohammedans of Turkey, although governed by the Koran, have found it necessary to accept for juristic purposes the corrupt system of Roman law which they found in use when they made Constantinople the centre of the Turkish Empire; that of Southern Europe, where the Roman law has always been the common law of the people; that of Northern Europe, where the Roman law has become the basis of jurisprudence by reason of its introduction through political association and the extension of the influence of the *Corpus Juris;* and that of England and all other countries dominated by the Anglo-Saxons, in which has been developed a Teutonic system under the name of the common law.

Modern Jurisprudence.

The extension of Anglo-Saxon domination and the peculiarities of the system of law which they developed in England and have carried with them to all parts of the world over which they have extended their power, are so marked that the history of modern jurisprudence may properly be said to be concerned with the conflict between two rival judicial systems. The whole civilized world has been divided between the civil law of the Romans and the common law of the Anglo-Saxons.

Two Great Systems.

The political circumstances surrounding the attempt of barbarian rulers to assume the garb and authority of Roman emperors served in Northern Europe to put the civil law and the Teutonic customary law into relations of antagonism. In Prussia the *landrecht* prevailed as against the civil law, while in France the civil law was victorious. But the ultimate result has been that the entire scientific study of law in Northern Europe has been devoted to the civil law, which may properly be said to be the basis of the systematic jurisprudence of every European country.

Antagonism to Civil Law in Northern Europe.

In England there have been suggestions of a similar contest; but so far as there has been any real contest it has existed between the canon law and the common law, the former being assumed to be an embodiment of the civil law, although the points in controversy between the canonists and the common law lawyers did not relate to matters having reference to the peculiar principles of the civil law. The common law has been a receptive system. There never was any contention on the one hand that the civil law was of authority in England, and consequently there has been no occasion for hostility between the two systems. Authors and judges have been able to appropriate the learning of the civil law and apply its principles in new cases for which they seem to furnish a satisfactory solution without being charged with

No such Contest in England.

recognizing an alien jurisdiction. The question as to the fundamental relations between the two systems for historical purposes comes to this, whether the common law was developed into an independent system of jurisprudence influenced, as it may have been at some stages of its history, by the learning of the civil law, but on the whole substantially indigenous, or whether, on the other hand, there was no systematic jurisprudence in England save as the conception of general law, and the principles in accordance with which a system was constructed, were borrowed from civil law sources.

Common Law not derived from Civil Law.

No citation of authority is necessary to support the proposition that English jurists have almost universally denied any fundamental derivative connection between the common law and the civil law. They are united in the assertion that the systematic jurisprudence in England has been developed from sources and impulses peculiar to the English people. And the contention of those who would have us believe that the common law as a system is fundamentally an outgrowth of the civil law resolves itself into a claim that authors such as Coke, Hale, and Blackstone, who have expounded the common law system and explained its development from Anglo-Saxon sources under impulses peculiar to it, have been so blinded by prejudice and provincialism that they have failed to see or to admit the truth.

Historical Facts.

The historical facts on which the advocates of the claim of the civil law to be the real foundation for jurisprudence in England rest their case may be briefly grouped as follows:

Roman Law in Britain.

(1) The Roman law prevailed in England during the period antedating the Anglo-Saxon invasion while Britain was a province of the Roman Empire; that is, from A. D. 43 to, say, about the beginning of the fifth century when the Roman legions were withdrawn, and all assertion of Roman power in Britain was abandoned. It appears that during this period Papinian, who afterwards became at Rome one of the great commentators of the civil law, administered justice at York as provincial praetor. But first it must be suggested that the *Corpus Juris* had not yet been compiled, and that Roman law had not reached that definite form which enabled it at the close of the Middle Ages to extend itself over Europe as the only known body of systematic law. Again it is to be remembered that in the countries of Northern Europe which were at the same time under Roman dominion the civil law did not become established as the foundation of jurisprudence until a much later period. And finally and conclusively, there is not the slightest evidence that the laws and institutions which prevailed among the Britons in England during the Roman occupation and as a result of that occupation had any effect on the laws

and institutions of the Anglo-Saxon invaders. As has already been pointed out, the Teutonic tribes recognized the personality as distinct from the territoriality of the law, and preserved for themselves the social system brought from the fastnesses of Germany. Until a more fully developed feudal system converted the customary law of the people into the civil law of a given territory, the relations between the Anglo-Saxon invaders and the Britons whom they found in possession of the land was very different from that of the Goths or Lombards who settled among the more highly civilized people of Southern Europe. There is no evidence that the Britons themselves had made any substantial advancement in Roman civilization. The Anglo-Saxons became the dominant people, not only in military power but in social organization, and it is not reasonable to suppose that they abandoned their own institutions and laws and adopted those of a conquered race no higher in the scale of civilization than they. What had the Romanized Britons to offer which the invading Saxons should desire to adopt? So far as there is any evidence, the Roman influence remained superficial, and was confined to a few cities where traces of Roman occupancy, as distinct from mere military conquest, are still to be found. To have adopted Roman institutions would have involved necessarily the adoption to a considerable extent of the Roman language, but no one can point out any substantial traces of the Roman language in the speech of the Anglo-Saxons at the earliest period of which monuments of the Anglo-Saxon speech may be found. It is easy to make a catalogue of similarities between the Anglo-Saxon law and the civil law as to particular and disconnected subjects. But such analogies may be traced between any two systems of law. Those who reason by means of such analogies might trace our jury system, for instance, to the Mosaic Code or the jurisprudence of Egypt with as much assurance as they do to the civil law. Until some historical connection can be established between the laws and institutions of the Anglo-Saxons in England and those of the Romanized Britons, we shall be justified in accepting the belief that the laws of the Anglo-Saxons, such as they may have been, were of Teutonic and not Roman origin.

During Anglo-Saxon Period.

(2) During the Anglo-Saxon period, that is, from the time of the invasion down to the time of the Norman Conquest, the only possible Romanizing influence which could have been brought to bear on the laws of England were those resulting from the introduction of Christianity by missionaries from Rome, and the study by learned men of continental systems of law. Much has been said of the influence which bishops and priests from Rome might have exerted on the law. But the extent of such influence is a matter of pure surmise. So far as the monuments of Anglo-Saxon law afford any evidence, there was no Roman-

ization from this source. The system of courts was purely Anglo-Saxon, and so was the procedure. The age was not one marked among the English or among Teutonic peoples in the northern part of Europe by any enthusiasm in the study of jurisprudence. From Alfred to Edward the Confessor the laws, so far as we have any evidence as to what they were, remained purely Teutonic. The Danish invasion introduced no Roman elements, for as yet the Danes had not acquired Roman institutions or laws. The laws of Cnut were as purely Teutonic as those of Alfred.

(3) The Norman invasion was the result of a claim of William the Conqueror to the throne of England by inheritance, and his so-called conquest was simply the establishment by force of his right to rule as an English king. From the first he recognized the Anglo-Saxon laws and institutions, and repeatedly bound himself to observe the laws of Edward the Confessor. The Normans introduced in its full development the feudal system, but that was distinctly Teutonic and antagonistic to the social system of Rome. The laws of Normandy are to be discovered by a study of the various compilations of its customary laws, and such study discovers institutions and conceptions of law purely Teutonic and almost exclusively feudal. No one has been able to discover in the various *coutumiers* which were a favorite source from which to ascertain the early law of England any traces of Romanization. The *Assize de Jérusalem* which the Crusaders promulgated in the East, and which maintained some precarious existence there for a considerable period, was feudal and not Roman. With the Normans came the distinct conception of territoriality, for the feudal system was territorial rather than personal. The sovereignty of the lord was complete and absolute within the limits of his domain, and took no account of the principles of the different systems of law applicable to people of different nationalities.

Norman Conquest.

(4) Law in England took systematic form during the century and a half from the beginning of the reign of Henry II to the end of the reign of Edward I. Were the form and conception of this systematic law derived from the civil law? Around this question the controversy as to the nature of the indebtedness of the common law to the Roman law properly turns. If the Anglo-Saxon law took systematic form independently of any controlling influences from the civil law, then it is as much entitled to be considered a self-dependent system as the Roman law, which, although it assimilated to itself foreign material, was in its spirit and form a development of the Roman people.

Beginning of Systematic Law in England.

During the reign of Henry II the elements which had before that time been lacking to entitle the common law of the Anglo-Saxons to be regarded as a system of jurisprudence were added to

it. Previously the law had been administered almost entirely in local jurisdictions without any systematic supervision. But when the king sent his justices into different counties they regarded themselves as administering the king's law in the king's name, that is, as administering a national law. Previously there had been no form of judicial trial, which properly involves the application of rules of law previously conceived of to statements of fact to be ascertained according to some form of judicial investigation. But that king introduced the various assizes by which facts were to be determined in order to ascertain the applicability of certain rules of feudal tenure, and thus laid the foundation for a trial to the country, that is, by jury, of controversies which otherwise would have been submitted for settlement by compurgation or ordeal. From the time of Henry II the records of judicial proceedings are preserved, following a somewhat well-established form of procedure.

System of Law begins with Henry II.

The first English law-book, attributed to Glanville and entitled *A Treatise on the Laws and Customs of the Kingdom of England,* was written and made public at the close of this reign, that is, between 1187 and 1189. It is immaterial whether the authorship of that work be attributed to Glanville, who was Chief Justice of the King's Court near the close of that reign, or to another. It is a systematic treatise purporting to state the law of England as administered in the courts. It is not a compilation of statutes, but an exposition of a judicial system, written for the purpose of making the laws which the courts administered known to those participating in such administration. There is no reason to assume that the author of this treatise was ignorant of Roman civil law, the study of which, after its revival in the schools at Bologna and other seats of learning, had been prosecuted by students going abroad, and under Vacarius, a civilian lecturing at Oxford prior to 1171, and there is abundant internal evidence in the book itself of the familiarity of the author with civil law doctrines. But instead of pursuing the method of the *Institutes* of Justinian, the author plunges at once into an explanation of the writs known to the English law, by which proceedings in the King's Courts were to be commenced and in accordance with which the nature of the proceedings in any particular case was to be determined, without paying any attention to the natural law or discussing abstractly the rights of persons or property; and two thirds of the book is taken up with these writs, of which it is apparent that the author had made an extensive collection. Now the writ by which a suit was commenced in the courts of the king, as distinct from the process by which suits were instituted in the local courts, was not analogous to anything of which one familiar with the civil law only would have knowledge. If the author of the treatise had had in

Glanville.

mind the purpose to expound the civil law as recognized in and applicable to England, he would naturally have selected for exposition some features common to the two systems from which he might have built up a presentation of English law. On the contrary he selected a peculiarity essentially English, and introduced that method of explanation of the law by means of the nature and form of the writ in each particular class of cases which is so characteristic of the early English system. It is hardly to be believed, then, that the system which the author of the so-called Glanville treatise conceived of as the English law was in any way dependent for its form or substance on the civil law, which was then receiving so much attention abroad, and had so recently been the subject of instruction at Oxford.

If it be contended that English jurisprudence did not take definite form until during the reign of Henry III, about seventy years after Glanville, when Henry de Bracton wrote his great work in five books on *The Laws and Customs of England*, and that this was the first arrangement of the English law in a systematic manner, and further that this treatise shows the distinct recognition and acceptance of the forms and principles of the *Corpus Juris Civilis*, it is necessary, in discussing the issue thus raised, to make a thorough estimate of the nature of the work which Bracton really did in formulating the English system. In speaking of the laws of England as distinct from those of other countries, in that they are not written and are founded on usage and custom, but are nevertheless entitled to the name of laws because they have the force of law, Bracton says it should be known that the nature of the treatise consists of "the facts and the cases which daily emerge and happen in the realm of England that it may be known what is the proper action and what is the proper writ according as the plaint shall be real or personal, and what acts are thereupon to be completed, and what enrollments are to be made according to the pleas and the objections, in accusing and in proving, and in defending and in excepting, and in replying and so forth." Proceeding, then, with a somewhat philosophical statement of the nature of law and definitions of jurisprudence, of equity, and of rights, all of which are evidently fashioned after the exposition of the civil law found in Azo's *Summa*, a treatise then well known, and to which the author makes specific reference, and some further theoretical exposition of the nature of rights in things and the method of acquiring them, he proceeds in his Third Book with a discussion of actions, still following his civil law guide, although adapting the matter to some extent to common law procedure. But in the Second Treatise of the Third Book he speaks of the Crown, and under that head discusses the law of crimes, and

Bracton.

for this subject he apparently finds no guidance in the civil law; and in the remainder of the work he describes with great elaboration the various assizes, the writ of right, essoins, warranty, and other subjects peculiar to the English law, without any indebtedness, so far as can be discovered, to the form or substance of the Roman civil law. And throughout all that portion of the treatise, which constitutes its major part, in which he purports to present the law as administered in England, he refers to the decisions of the judges as the satisfactory evidence of what the law of England is on the points discussed, and makes no pretension of resting upon the authority of the civil law, nor is there any internal evidence of his having done so.

Nature of Bracton's Work.

In fact, Bracton's treatise is an exposition of a distinctive English system of jurisprudence, prefaced by a scholar's disquisition on the general nature of law derived confessedly from a study of the Roman system. It seems to be well established that Bracton was a cleric, and therefore educated in the canon law, which embodied largely the principles and methods of the civil law, and that on the other hand Glanville was not a cleric, but only a common law judge; and perhaps this suggestion as to the preliminary education of the two men may explain the fact that Bracton prefaced his treatise with an exposition of civil law learning.

Civil Law in Bracton.

If the law of England as a system of jurisprudence was first given definite form by Bracton, then is that system to be found in the first portion of his treatise, confessedly modeled after the civil law, or in the latter portion, which is devoted to the law of England as expounded by the judges and resting on their authority and not on civil law authority or learning? Clearly the latter assumption is the correct one; for when Bracton is subsequently cited as an authority on English law, reference is made to the portion of the work which purports to state English law pure and simple, and not to the portion which contains an exposition of the general principles of law derived from civilian sources. And when a writer generally known by the name of Britton attempted, during the early years of Edward I and within a quarter of a century after Bracton's time, to state the English law, purporting to speak in the name of the King, while he evidently borrowed much of his material from Bracton, he ignored entirely the general exposition of law and confined himself strictly to those subjects discussed in that portion of Bracton's work professing to deal with the English law as he found it; and in this respect he followed the method of Glanville rather than that of Bracton.

Bracton's Note-book.

Much light is thrown on Bracton's sources of authority for the English law by his voluminous note-book recently translated and edited, in which are set forth memoranda of many cases decided by the judges. These memoranda

evidently furnished the material in the light of which the English law was expounded by the author in his treatise, and they serve to characterize Bracton as in a proper sense the first exponent of a system of law founded upon judicial decisions and the records of courts as distinct from the nature and form of the peculiar writs by which actions in the English courts were instituted. From the time of Edward I to the present the material resorted to by judges, lawyers, and students consists of decisions in particular cases, preserved first in the Year-Books and subsequently in the various series of English reports, and later made the subject of exposition by text-writers. The effort of Bracton to introduce a scientific system of general law by following civil law exposition, if there was any such effort, was a complete failure; and after his time judges, lawyers, authors, and students resorted to judicial decisions as found in the reports, and collected by Fitzherbert, Brooke, and other digesters under heads having no reference whatever to civil law arrangement, but adapted strictly to the subjects under which the distinctively English law naturally arranged itself.

Blackstone's arrangement of the law under four headings, Rights of Persons, Rights of Things, Private Wrongs, and Public Wrongs, is notoriously unscientific, but it is based on civil law notions. The fact is that the classification of the *Corpus Juris Civilis* was not the result of any scientific conceptions, but was founded on custom, which represented an effort to reach an arrangement intelligible and convenient. Our present classification of the common law has been worked out in the same way.

Subsequent Resort to Civil Law.

For the present discussion it is immaterial to what extent judges and authors resorted to the civil law after Bracton's time to discover principles which might be applied in the decision of cases not covered by English procedure. That such resort was had, especially in equity and admiralty courts, may be fully conceded. But this has little bearing on the proposition that the common law as a scientific system of jurisprudence is distinctively English and does not owe its form or substance to any learning derived from civil law sources.

Citation of Civil Law in Text-books.

The effort to make use of the civil law in illustrating and expounding the common law is apparent in both English and American treatises on branches of the law. Blackstone not infrequently refers to civil law doctrines, and Kent and Story sometimes make such references at considerable length. But the practice has largely fallen into disuse, for the evident reason that the decisions of the English and American courts furnish better illustrations of the principles which have been and will be applied in the decision of cases than the *Corpus Juris* of Justinian or the voluminous expositions of the civil law to be

found in countries where that system prevails. There has been no effort to ignore the civil law or to shut out any possible use which can be made of it in the exposition or development of the English system, but common law lawyers have reached the practical conclusion that they cannot secure favorable consideration by common law or equity courts of arguments based on the rules of the civil law, and the judges have found that they can reach a more satisfactory solution of disputed questions of law by considering the analogies found in the decisions of courts applying the principles of the common law system than by resorting to civil law authorities.

Indebtedness of Common to Civil Law.

The indebtedness, then, of the common law to the civil law is not for scientific form nor substantial content, but for words and phrases which have afforded a convenient channel through which juristic ideas might be expressed, and for some particular rules applicable in the solution of legal difficulties which, having arisen among Romanized peoples on account of their more advanced civilization, gave occasion for the announcement of principles which were helpful to the common law jurist in similar cases.

Indebtedness of Civil Law to Systems of Northern Europe.

A comparison between the English system of law and the civil law system of the Northern European states suggests not a greater indebtedness to the civil law on the part of the common law, but a smaller indebtedness of the Northern European systems. Glanville expresses the essential distinction between the laws of England and those of European countries when he says that the English laws, although not written, may be termed laws, for the mere want of writing does not deprive them of that character. And indeed, the resemblance of the codes of France, Germany, Austria, and Belgium to the Justinian Code in matters of form is a strong argument against the assumption that the systems of jurisprudence of these countries are directly derived from the Roman system as a fountain-head. For the science of law is a social science and the result of evolution. As conditions change, so the law must change, and conceptions familiar to the people of one century become unintelligible to their successors of the next. Those who expound the common law take great pride in the continuity of the institutions and principles which they find recognized therein traceable to Anglo-Saxon or Norman sources; but for practical purposes the decisions of the judges represented in the Year-Books and collected in Fitzherbert's Abridgment are no more intelligible to the judge or lawyer of to-day who is properly concerned primarily with the decision of cases now arising than the opinions of Paul, Ulpian, or Papinian in the second or third century of the Christian era. Indeed, the decisions found in the Year-Books are less intelligible to the modern lawyer, for they deal with crude facts

and a procedure which is obsolete, so that the issues are not to be understood without a laborious tracing of the historical connection between the law of that time and the law of the present, while the generalizations of the civilian writers have in appearance at least some force and meaning. A similar comparison may be made between the French or German or Belgian codes and the Code of Justinian. The subject-matter is so entirely different, and the legal relations applicable to existing social conditions are so dissimilar, that only to a very limited extent is the one illuminated by the other. For example, the law of commercial paper, which is supposed to have been incorporated into the English law from civil law countries by the recognition in England of the custom of merchants which had been brought from continental countries, was entirely unknown to the lawyer of the time of Justinian. Indeed, so rapid, as compared with the course of general historical development, have been the changes in social conditions that the *Code Napoléon*, the latest typical civil law code, promulgated in 1807, contains but a small part of the written law actually administered in France, and it has necessarily been supplemented by codified legislation of almost equal bulk.

For historical purposes, therefore, it may properly be said that there are in the civilized world two independent systems of law, which have had marked and important relations to each other, but which have grown from distinct sources; and it may not be entirely foreign to the province of an historical discussion to notice in conclusion and briefly their substantial differences.

Common Law not written.

The most striking difference is that which has been recognized ever since the earliest scientific exposition of the common law system, that it remains substantially a body of unwritten law, that is, a body of law not resting upon legislative authority; while the civil law, wherever it prevails, has been reduced to authoritative written form. In other words, the common law remains largely a law of precedent, while the civil law is one of enactment. The former is more easily adapted to changed conditions, the latter more easily reduced to scientific statement. The former is cumbersome on account of the immense mass of material to which resort must be had in ascertaining the rule which should be applied to a particular case; the latter is uncertain and indefinite because of the difficulty in making authoritative exposition or interpreting statutory language as applied to new conditions. Even in the field of authoritative legislation the common law is more adjustable than the civil law because of the greater freedom which the courts exercise in the interpretation of statutory enactments additional to or superseding the unwritten law. The simplicity and brevity of written codes constitute attractions for the writer on jurisprudence

not justified by their results in the actual administration of the law.

Another marked difference between the two systems is the separation in practical administration of the functions of determining the law and the facts for the particular case. There was a similar separation under the civil law as administered at Rome, with this difference, however, that the general principle to be applied to the case was determined abstractly beforehand, and the facts ascertained afterwards, while in the common law system the principles are expounded only with reference to the particular facts. But in the modern civil law principles and facts are usually determined in one investigation and without any definite distinction as between the two processes. The common law jury trial is cumbersome, and sometimes unsatisfactory by reason of this separation of functions between the jury and the judge; but on the whole the development of the law as a system is thereby promoted, and there is a practical advantage in placing the judge with relation to the case in the attitude of an arbitrator of the law, superintending only the determination of questions of fact. It can hardly be said that in this respect either system possesses any marked advantage over the other. Certainly there would be no gain to either system from any attempt to introduce into it the methods of the other. Each has had its historical growth, and each has become a part of the social organization of the people among whom it prevails.

Separation of Questions of Law and Fact.

It may be justly claimed for the common law system that it represents more fully the conception of law as the outgrowth of social conditions, and resting for its authority upon the aggregate social will. There is something more than rhetorical commonplace in speaking of the common law as the law of the people. The civil law, on the other hand, is peculiarly the law of a sovereign, whether that sovereign be a monarch or a legislative body with unrestricted powers.

Rests on Aggregate Popular Will.

It is this last distinction which suggests a certain dramatic interest attaching to the contest for supremacy on the American continents between the Latin races and the Anglo-Saxon race as affecting the history of law. The Spaniards planted the civil law in the states of South America and in Mexico, where it still remains the foundation of jurisprudence. The Anglo-Saxons brought the common law to the Atlantic coast of the continent of North America. The final supremacy of the common law in Canada and in the other portions of the North American Continent east of the Mississippi was determined by the result of the long conflict between the English and the French. But it remained for the United States, in the acqui-

Division of America between Common Law and Civil Law.

sition of the territory of the Louisiana Purchase, to determine that the common law system should substantially prevail in that great region. Those ambitious and adventurous pioneers of Latin civilization, La Salle, Marquette, and Joliet, blazed the way for the civil law, but the legitimate fruits of their struggle were not gathered by the civil law, but on the other hand were substantially denied to it when Napoleon sold the Louisiana Territory to the United States. If the common law system is better suited to the needs of a free people and an advancing civilization than the civil law, which obtained its historical form under an absolute empire, then it is fortunate for humanity, and in particular for the people of this great Western country, that in the conflict of races supremacy was established for the common law by the success of those who inherited Anglo-Saxon institutions and established them throughout the region between the Mississippi and the Pacific.

CHARACTERISTICS OF THE COMMON LAW

BY NATHAN ABBOTT

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During the three centuries prior to Lord Coke the common law of England in some way or other gathered itself together out of custom and differentiated itself from other legal systems so far as to have gained a name and home — the common law of England. It was the great intellectual achievement of a people large enough and strong enough to have ideas of its own, and isolated and individual enough to develop those ideas in its own way. In the three centuries subsequent to Lord Coke its child in America has lived and grown after the manner of its kind, but it has not yet gained a new name, although it has a new home. It is the common law of England in America — the common law of England plus those slow accretions and changes that were inevitable where a free and expanding people expressed their jural needs. This is also the great intellectual achievement of the American people; in the eighteenth century its one intellectual product, in the nineteenth century its greatest intellectual product.

The common law in both countries in its beginning was the expression of a free people's needs and standards of justice, and was not essentially different in its nature from their needs and standards as expressed in art or in literature. And the common law being the product of a free people is a living institution possessed, not only of a vital and conservative, but also of an assimilative and progressive power.

The vicissitudes of parent and child exemplify what such a living institution can endure. But law as a living institution is not as stable as living matter. A cross-section of a tree at its base is not essentially different from one made one hundred feet from its base. A cross-section of the common law at one time is not necessarily like one made at an earlier or later time. Its nature changes with the national views of that on which law rests. This in part explains the difficulties encountered in defining law. What at one time is custom at another time is law, and yet each will have a like compelling force.

The purpose of this paper is to give some account of the fundamental characteristics of the common law at two somewhat widely separated periods and to contrast them. One period is that of the common law in the time of Lord Coke, the other the common law

in America at the present day. The periods are separated by three centuries, or those of the common law in sixteen hundred and in nineteen hundred. The period with Lord Coke is selected because during his time the jurisdiction of the common law courts was defined, limits to the royal prerogative set, and chancery made a court of ordinary jurisdiction for equity; and because this was the time of the beginning of colonization in America. The common law of Lord Coke was the common law of Winthrop and Smith.

Like other forms of thought manifested in literature, the common law is the product of influences that can be discovered and whose effects can be traced. These influences may be called direct, if exercised by the people or the judges, and indirect if occasioned by forces operating on the people or the judges. A body of law which starts with the proposition that it is the custom of the people soon arrives at the stage where the solution of legal questions calls for the aid of either outside systems or reason. According as the people or the legal profession applying this reason or deductions from the outside system have been the more concerned in law-making, the characteristics of the law have been popular or technical and conservative or progressive. It is therefore necessary, if we would discover the characteristics of the common law, to say something of the influences that contributed to shape it prior to Lord Coke; then to note its characteristics in his day; and then to speak of the influences that operated in America to influence its unwritten law, and to note its characteristics so far as they are disclosed by certain resemblances in the law of the several states.

Of the external influences, the canon and the civil law were most potent and operated upon the common law by way of compression rather than repression. Apprehensions of those systems and contentions with them intensified the loyalty of the English people for their own system. The power of the advocates of the canon and civil law in the universities, combined with the location of the courts at Westminster, tended to develop the schools of common law in the Inns of Court. The decline of the local courts with the growth of courts at Westminster made them less responsive to and expressive of popular needs, and may have impaired the popular regard for the common law. How far the oft-quoted phrase in the Statute of Merton justifies wide generalization, it is not easy to say. But the influence of the Inns of Court would seem inevitably to substitute a professional for a popular standard of justice. The concentration in those Inns of a body of specialists, who for years dealt with problems, worked out in moots, in the halls, and in arguments in court under the scholastic training of the century before Lord Coke, must have developed a body of logicians and a legal system founded on logic. In the Inns of Court, like bees in a hive, the lawyers secreted the law

of England. It was no longer the custom of the people, although so described, but a highly technical law. That the written law and the pleadings were expressed in Latin or French would also tend to restrict its expression to lawyers. These influences would tend to impair the close relation of the people to their law that early had existed. The introduction of a technical procedure which under the hand of the professional lawyer would tend to be an end rather than the means would be misunderstood by the people. Authorities given in Parke's *History of Chancery* show considerable evidence in the statutes and in the debates in Parliament that the common people were discontented with the common law and its professors. But the lawyers were calling their handiwork the perfection of reason. The pages of Coke and Plowden abound with cases that are in no way related to the customs of the people. As Professor Gray says, "With a great part of the law the customs of the people have obviously had nothing more to do than have the motions of the planets. The enormous mass of the law of pleading and of evidence has been born and bred within the four walls of a court. The community at large, those who make custom, know absolutely nothing about it. So with a great part of those legal rules which are not plainly of an ethical character. For instance, the rule in Shelly's Case, is that a product of the 'common conscience of the people'; or the rule that 'dying without issue' means an indefinite failure of issue; or is the rule that a parol promise without consideration cannot be enforced a spontaneous evolution of the popular mind?" ("Definitions and Questions in Jurisprudence," 6 Harvard Law Review, 21–32, 1892.) It is evident, then, that the change from popular to professional factors occasioned by external pressure and internal development have affected the fundamental characteristics of the common law.

In the growth of the sovereign power and the legislative, judicial, and ecclesiastical elements of society each has exalted its powers and extended its frontiers. There comes a time when the last meet and tend to overlap. The controversies engendered in adjusting the powers and defining the frontiers have created the larger part of constitutional law, the province of legislation, and the jurisdiction of courts. The common law was affected in its scope by the controversies of its judges with canonists and chancellors. And the content of the law was modified by the struggle between the different courts for litigants and preëminence.

There are two forces having their source in national traits which contributed to shape English law; one is the liking for fair play and the natural turn of mind for litigation that is found in the English people. By this is meant something more than a fancy for contention and technicality; rather the right settlement of disputes in an orderly and judicial way. Perhaps at this day it may be difficult to

affirm that this is a cause or an effect from such masterful hands as those of Henry II. But the reliance on courts has tended to the development of law and the independence of the judge. It is of this that Lieber says, "It is a great element of civil liberty and part of a real government of law which in its totality has been developed by the Anglican tribe alone. It is this portion of freemen alone on the face of the earth which enjoys it in its totality." (Civ. Lib. and Self-Govt., p. 203.) The other is a respect for authority deep-seated in the English people, a respect arising either from position or age. This in part explains why precedents have such a hold on the courts, and its lack is one of the facts to be noted in America. It has been said that the reliance on precedents is due to an incapacity in the English to reason generally. Commenting on the arguments in the debates on impositions in 1610, in which we find an early and remarkable use of precedents, Mr. Gardner says, "The speakers on both sides seemed to have had a horror of general reasoning." (2 Hist. of Eng. 75.) De Tocqueville noted this trait in Englishmen and its absence in Americans, and devotes a chapter to "Why the Americans show more aptitude and taste for general ideas than their forefathers, the English." (Dem. in Am. vol. II, chap. 3.) It will be instructive to follow the Japanese in their jural growth under a French code with their seeming natural capacity for generalization, but with their present tendency to disregard precedent excepting for illustration. (See address of Dr. Rokuichino Masujima before N. Y. State Bar Ass'n, 1903.) The other aspect of authority arising from age is commented on by Mr. Gardner in connection with the same impost debates, "Our ancestors did not refer to precedents merely because they were anxious to tread in the steps of those who went before them, but because it was their settled belief that England had always been well governed and prosperous. They quoted a statute not because it was old but because they knew that, ninety-nine times out of every hundred, their predecessors had passed good laws." Lord Ellesmere in Calvin's Case, quoting from the Year-Books, said, "Our predecessors were as sage and learned as we be." In connection with precedent in the time of Coke it is to be noted that during the reign of Elizabeth the printing-press was busy reproducing law-books. The labors of Tottell made the Year-Books a "profitable and popular literature." (See Soule, "Year-Book Bibliography," 14 Harvard Law Review, 563, 564.) There were editions of all the treatises, and these with the abridgments opened up the past and ancient laws to the professional students in the Inns in a new and forceful way.

In trying to describe the fundamental characteristics of the common law I appreciate that it will be difficult to say anything that is not trite or commonplace. To obviate this in part I shall select

a case in the time of Lord Coke, and with it endeavor to illustrate such characteristics as seem to me fundamental. The case chosen is Calvin's. It was an exceptional case, interesting in itself and for what it discloses by inference. It also is a convenient case because of its relation to the American colonists, and for its effect upon the political debates of the middle of the eighteenth century.

From the meeting of the crowns of Scotland and of England in James I arose the question whether the *post-nati*, or those born in Scotland after the accession of James to the crown of England, were aliens in England. A proclamation of James directly answered this in the negative. Commissioners of both countries proposed to the Parliaments of both countries that the common law of both nations should be declared to be that all born in either nation since James was king of both were mutually naturalized in both. The House of Lords and ten out of twelve of the judges of England supported this view. But the Commons would not assent to declare that the common law was as proposed. It was therefore determined to bring the question before the courts. For this purpose land was bought in London in the name of one miscalled Calvin, an infant born in Scotland since the accession of James to the English throne, and a suit was brought in Calvin's name in the King's Bench to gain possession of the free-hold. And a bill was brought in Chancery for detainer of the title-deeds. A demurrer in both cases raised the question in each case whether the plaintiff being an alien born be disabled to bring any real or personal action for land within England. After argument in the King's Bench, both cases were adjourned into the Exchequer Chamber, and there argued by counsel and all the judges of England and Lord Chancellor Ellesmere. The Lord Chancellor and twelve out of the fourteen judges decided the demurrer in favor of the plaintiff on the ground that, having been born since the accession of James, he was not an alien in England.[1]

The first characteristic illustrated by Calvin's Case is that the common law deals with facts.

Under some systems a hypothetical question can be presented to the judges. In Calvin's Case one might have been framed generally: Is a person born in Scotland since James I became King of England an alien in England? But such a proceeding is not possible by the common law. It was necessary to present to the judges the facts of a real case. There must be parties before the court before it will act. And without them and a specific question to decide, all the utterances of the court are obiter. Bacon said in his argument, "The

[1] Calvin's Case is reported in 7 Rep. 4a (1608). The arguments in committee in 1606 in Moore, p. 790; and both of these, with the argument of Bacon, Solicitor-General, counsel for Calvin, in the Exchequer Chamber, and Lord Chancellor Ellesmere's opinion in the Exchequer Chamber, are in 2 How. State Trials, 559–695.

case is no feigned or framed case, but a true case between two parties." Legislation is an endeavor to find an answer to an indefinite number of hypothetical cases. The courts endeavor to find an answer to a single concrete case that has arisen in the past. This characteristic of common law has the inconvenience that a point of law may long be uncertain for lack of parties willing to litigate it. It is especially inconvenient in America, where the constitutionality of a statute remains to be determined until litigation arises. But this inconvenience has not occasioned any change in the theory of the common law.

Dealing with facts alone, the common law does not judge of unexpressed thoughts, theories, or opinions. The year before Calvin's Case was decided, Lord Coke wrote, "The Lords of the Council of Whitehall demanded of Popham, Chief Justice, and myself, upon motion made by the Commons in Parliament, in what cases the Ordinary may examine any person *ex officio* upon oath; and upon good consideration and in view of our books, we answered to the Lords of the Council at another day in the Council Chamber, that 'No man ecclesiastical or temporal shall be examined upon secret thoughts of his heart, or of his secret opinion; but something ought to be objected to against him which he hath spoken or done.'" (Oath *Ex Officio*, 12 Rep. 2629 (1607).

A second characteristic of the common law is its adaptability within rigid limits. "The most distinctively English trait of our medieval law is its 'formulary system' of actions." (2 P. & M. Hist. E. L. 556.) Lord Ellesmere touches upon the elasticity of the ancient common law where in the case of need a new writ could be framed in Chancery so that no one need depart without remedy. But it was now the "closed cycle of original suits, the catalogue of forms of action to which naught but statute could make addition." (Mait. Ed. Bract. N. B. vol. 1, p. 6.) "It were better to live under a certain known law though hard sometimes in a few cases than to be subjected to the alterable discretion of any judge," said Chief Justice Popham in commendation of the law of England in his opinion before the Lord's Committee. (2 How. St. Tr. 569.) The litigant could choose a definite weapon, but at his peril. The judges were passive if he erred. "That is part of the fundamental methods of the common law; the party can have the law's help only by helping himself first. On these terms and not otherwise it is open to all." (Sir Frederick Pollock, "Ex. of the Common Law," 14 Col. Law Rev. 20.) The courts did not necessarily initiate proceedings even in the case of crimes. In legal controversies the choice of weapons was large, and within their limits the common law could deal with any matter, simple or complex, and with any party, whether single or many, and could reduce all litigation to the simple formula, Command A

that without delay he render a certain thing to B or do full right to B. Calvin's Case neatly illustrates this adaptability. By a writ of assize and a demurrer the whole matter was capable of consideration and settlement.

A third characteristic of the common law is its generality. No one was above the law, and every man, whatever his rank, under the same circumstances, was subject to the same law and in the same courts. The ancient law has been stated in the thirteenth century in the Statute of Marlborough (1267): "All persons as well of high as of low estate shall receive justice in the King's Courts." Of this Coke says (2 Inst. 103), "This is the golden met-wand that the law appointeth to measure the cases of all and singular persons, high and low, to have and receive justice in the King's Courts." His added words, "For the King hath distributed his judicial power to several courts of justice, and courts of justice ought to determine all causes, and that all private revenges bee avoided" (see also 4 Inst. 71), suggest Sir Frederick Pollock's generalization, not wholly in point in this connection, but conveniently noted here, "The King's Courts, at the outset of their career, came under a rule which we shall find to run through the whole of our legal history and never to have been neglected with impunity. It may be expressed thus: Extraordinary jurisdiction succeeds only by becoming ordinary. By this we mean not only that the judgment and remedies which were once matters of grace have become matters of common right, but the right must be done according to the fundamental ideas of English justice." ("Expansion of the C. L." 14 Col. L. Rev. 17.) King James claimed that he had not delegated all his powers as a law-giver. Lord Ellesmere argued that his proclamation controlled Calvin's Case, summarizing it as follows: "So now if this question seems difficult, that neither direct law, nor examples, nor precedents, nor application of like cases, nor discourse of reason, nor the grave opinion of the learned and reverend judges, can resolve it, here is a certain rule, how both by the civile law and the ancient common lawe of England it may and ought to be decided; that is, by a sentence of the most religious, learned, and judicious King that ever this kingdom or island had." (2 H. St. L. 693.) Lord Ellesmere again argued on the same line two years later in the Case of Proclamations. (12 Rep. 74.)

One other point needs to be referred to. James, the year prior to Calvin's Case, had claimed that "the judges were but the delegates of the King, and the King may take what causes he should please to determine, from the determination of the judges and may determine them himself." (12 Rep. 63.) But the common law has settled that the judges are more than delegates, and that power once imparted to them will not return to the King.

A fourth characteristic of the common law is that the proceedings

in the courts are public. In this regard there was a distinction in Lord Coke's time between criminal and civil proceedings. Of the former it may be said that when the colonists came to America a prisoner was kept in confinement more or less secret till his trial and could not prepare for his defense. He had no counsel either before or at the trial. At the trial there were no rules of evidence as we understand the expression, and the accused could not call witnesses in his own behalf. (1 Stephens's Hist. Crim. Law of Eng., 350.) But of civil causes, as Lord Coke said, "All causes ought to be heard, ordered, and determined before the judges of the King's Court openly in the King's Courts, whither all persons may resort, and in no chambers or other private places; for the judges are not judges of chambers, but of courts, and therefore in open court where the parties' councell and attorneys attend, ought orders, rules, awards, and judgements to be made and given, and not in chambers and other private places, where a man may lose his cause, or receive great prejudice, or delay in his absence for want of defense. Nay, the judge that ordereth or ruleth a cause in his chambers, though his order or rule be just, yet offendeth he the law because he doth it not in court." (2 Inst. 103.)

It is not merely for the public good that the English secured a public trial for civil and criminal causes, inestimable as is this feature of the common law. But all proceedings must be open; in some cases they are too open. But the general advantage outweighs this defect. But there is another aspect to this subject, namely the educative. The educational advantage to the public I consider trifling in civil cases. But the educational advantage to the bar and to students is well stated by Coke. "It is one amongst others of the great honours of the common law that cases of great difficulty are never adjudged or resolved *in tenebris* or *sub silentio suppressis rationibus;* but in open court and there upon solemn and elaborate arguments, by counsel learned of either party; and after that at the bench by the judges, where they argue seriatim upon certain days openly and purposely fixed, declaring at large the authorities, reasons, and causes of their judgments and resolutions in every such particular case (*habet enim necsio quid energiae viva vox*); a reverend and honorable proceeding in law, a grateful satisfaction to the parties, and a great instruction and direction to the attentive and studious hearers." (9 Rep. Pref. p. 38.)

A fifth characteristic of the common law is that in deciding questions of law the judges are controlled by statute; in the absence of statute, by precedents or custom; and in the absence of both, or if the precedents conflict, by their own reason. No reported case up to this time so fully discusses this proposition as Calvin's Case; no more novel case could be devised. "The case is rare and new," said

Lord Ellesmere. It was admitted on all hands that it was a case of first impression. Lord Coke spoke of it as being "Such a one as the eye of the law, our books and book cases, never saw; as the ears of our law (our reporters) never heard of; nor the mouth of the law, for *judex est lex loquens*, the judges, our forefathers of the law never tasted; I say such a one as the stomach of the law, our exquisite and perfect records of pleadings, entries, and judgments, never digested." (7 Rep. 4a.)

It will be instructive to examine Calvin's Case with reference to two points, one, its treatment of the law of nature, the other the source to which lawyers in the time of Coke could look for a standard of justice in the absence of precedent.

In committee in the House of Commons Sir Edwin Sandes showed that this case was proper to be consorted with the law of nations which is called "*jus gentium*"; for there being no precedent for it in the law "*lex deficit*" and "*deficiente consuetudine recurratur ad rationem naturalem*" and "*deficiente lege recurritur ad consuetudinem,*" which *ratio naturalis* is the law of nations, called *jus gentium*. (Moore, 790; S. C. 2 How. St. Tr. 563.)

By "ratio naturalis" Sir Edwin meant natural law, using the term to signify "common sense" as explained by Mr. Brice. (Essays in Juris. p. 587.) In the argument in Exchequer Chamber, Bacon, Solicitor-General, said that the common law was founded on and favored by the law of nature; that all civil laws are to be taken strictly where they abridge the law of nature; and that as by the law of nature all men are naturalized one toward the other, the presumption was that Calvin by the law of nature was not an alien in England. Bacon uses the term law of nature in the sense of natural or physical law and not in the sense used by Sandes.

The Lord Chancellor evidently had heard the argument of Sandes, for he says, "It is truly saide by a learned gentleman of the lower house, '*deficiente lege recurrendum est consuetudinem deficiente consuetudine recurrendum ad rationem.*'" (2 How. St. Tr. 672.) But Lord Ellesmere's conclusion is that the reason to which one finally must resort is not "the collective reason of civilized mankind," but that found only in those having four special qualities; namely, age, learning, experience, and authority to speak. (2 How. St. Tr. 686.) Lord Ellesmere has departed now from the theory of the law of nature of Sandes to that theory which treats natural reason as reason of the expert. Lord Coke disapproved of the proposition of Sandes which he put in the form that, for want of written law and of precedent, we are driven to reason, commenting upon it as follows: "If the said imaginative rule be rightly and legally understood, it may stand for Truth; for if you intend *ratio* for the legal and profound reason of such as by diligent study and long experience and observa-

tion are so learned in the law of this Realm, *as out of the reason of the same,* they can rule the case in question, in that sense, the rule is true; but if it be intended of the reason of the wisest man that professeth not the law of England (then I say) the rule is absurd and dangerous." (7 Rep. 19a.) Not even the King, the source of justice, could decide by his reason, as Lord Coke had told James the year before, for "His Majesty was not learned in the Laws of his Realm of England, and causes which concern the life, or inheritance, or goods, or fortune of his subject are not to be decided by natural reason, but by the artificial reason and judgment of law, which act is an act which requires long study and experience, before that a man can attain to the cognizance of it." (12 Rep. 65.) And even the learned in the law, in Lord Coke's opinion, could not decide difficult cases without argument in open court, "where Almighty God openeth and enlargeth the understanding of the desirous of justice and right." (Rep. Pref. p. 37.)

These extracts show the ambiguity in the use of the term law of nature and that even the judges were uncertain whether they could find assistance in the law of nature or reason and what the meaning of reason was. Coke's theory is that in the absence of precedent, the standard of justice, as in art, when it has become developed, becomes that of the expert. This tends to fix an arbitrary standard and to prevent progress or flexibility. As Professor Gray truly says, "Thus to limit jurisprudence is to take from it its chief glory. The supposed immutability of its principles was what once gave it its dignity and charm; to-day it owes them rather to its possibilities and prospect of boundless development." ("Gen. Definitions in Jurisprudence," 6 Harv. Law Rev. 21, 28.)

There is another principle in Calvin's Case, namely, that the use of precedent had become established in Coke's day, although the number of precedents cited in that case should be taken as exceptional rather than as illustrating the normal practice. Judges in the time of Coke were accustomed to cite authorities by way of "ornamenting discourse" as well as by way of authority, and in Calvin's Case they seem to compete in displaying general as well as professional erudition. In Moore's report of the proceedings in Parliament, he cites Statutes, Year-Books, Fleta, Littleton, and Dyer. In Bacon's argument, besides these, he refers to Coke's Reports, Plowden, Bracton, Fitzherbert, Stamford, Psalms, Genesis, Aristotle, and Xenophon. Lord Ellesmere, besides referring to the foregoing, cites the Register, Glanvil, Britton, Lambard, Blackwood, Hingham, the Civil Law, Ulpian, Tertullian, St. Augustine, Thomas Aquinas, St. Bernard, St. Gregory, Ezekiel, Esaias, St. John, St. Paul, Proverbs, Lucretius, Horace, Livy, and Cicero. Coke refers to authorities more than two hundred and fifty times, and besides most of the foregoing

vouches the laws of Edward I and of William II, Rolls of Court and of Parliament, Book of Entries, Skeene, Bacon, Law of Nature, Broke's Abridgment, Doctor and Student, Virgil, Tully, Romans, and the Acts of the Apostles. An interesting picture is suggested where in his report he says, "and Coke, Chief Justice of the Court of Common Pleas, cited a ruled case out of Hingham's report, tempore E. 1, which in his argument he showed in court written in parchment in the ancient hand of that time" (7 Rep. 9b), "which afterwards the Lord Chancellor and the Chief Justice of the King's Bench, having copies of the said ancient report, affirmed in their arguments." (7 Rep. 10a.) Authenticity of report counted as part of its authority. And again where he says "and so it was in Perkin Warbeck's Case — and this appeareth in the book of Griffith, Attorney General, by an extract out of the book of Hobart, Attorney General to King Henry 7." (7 Rep. 6b.)

A sixth characteristic of the common law is seen in its judgments when contrasted with legislation proper.

The judgment in Calvin's Case in the Exchequer Chamber was that the plea of alienage was not sufficient in law to bar the plaintiff, and that defendant further answer. This judgment by indirection had all the effect of an act of Parliament, naturalizing all the *post-nati* of Scotland. If any other *post-natus* had brought a similar action, the Court of King's Bench would have followed Calvin's Case, and so on indefinitely. The same result followed as would have been accomplished if Parliament had enacted the proposed bill naturalizing the *post-nati*.

It remains to contrast judgments in common law with legislation proper in the time of Lord Coke. Legislation then was not strictly confined to the King and Parliament. Other competitors were the King in Council, Resolutions of either House of Parliament, Electors of Parliament by vote, and the law courts themselves. (See Dicey, Constitution, pp. 48–58.) This in part explains the absence from the Statutes of the Realm of much of that general legislation which afterwards made acts of Parliament so voluminous. But speaking of Parliament by way of contrast with the courts, the former was composed of representatives interested in the subject-matter of legislation. The courts were operated by officers who were disinterested and impartial. Representatives in Parliament were chosen from the country at large. The "properties a Parliament man should have," as given by Coke, show the difference in theory between legislative function in his day and in modern times. He should be, Lord Coke says, without malice, rancor, heat, or envy; he should be constant, inflexible, and not to be bowed or turned from the right either for fear, reward, or favor, nor in judgment respect any person; and, third, of a ripe memory, that they remembering perils passed,

might prevent dangers to come, as in the roll of Parliament appeareth. (4 Inst. 3.) The legislator then was a man of courage rather than general training. But the judges were selected from a body of professional men and were experts. No person or body had the right to override or set aside an Act of Parliament (Dicey, Law of the Constitution, p. 38), unless within the limitation suggested by Lord Coke (Dr. Bonham's Case, 8 Rep. 107a, 118a,—1609), which does not seem to have been acted upon. However, there is apparent the same distrust by judges of popular legislation and reformation of the common law that is seen throughout the reports down to modern times. As Coke frequently said, it is a rule of policy and law that change of the law is to be avoided. (4 Rep. Pref. p. 9.) If Calvin's Case represented the theory of the time, the legislative function of the court practically was quite equivalent to that of Parliament. Commons had refused to enact a general law, but the judgment in the King's Bench, with the approbation of the King, seemingly accomplished the same result.

Turning now to the colonists, we find certain reasons why the common law should have continued its course unimpaired, and others that tended to modify it. Whatever may have been the theory in 1600 as to the law the colonists took with them to New England, probably the provisions in the Charter of Virginia of 1606 were inserted as a result of a discussion as to the naturalization of foreign-born subjects, by Lord Coke, who was then Attorney-General, and it is thought drafted the charter. The provision therein whereby James conferred "all liberties, franchises, and immunities within any of our other dominions" upon the colonists, at a later time was claimed to confer the rights of common law on the colonists and their children. The popular antipathy to the common law in most of the colonists in their early history cannot have been a sudden matter, but probably expressed the popular sentiment expressed in debates in Commons and in the statutes in the reigns of Elizabeth and James. For years in the colonies, there was almost uniform prejudice against lawyers. There was a tendency to revert to popular forms in administering justice. The standard was "God's Law," or the "Law of Nature." The jury system for a time was rejected in Connecticut and adopted in a modified form in other colonies. The literature of the civil law was well represented in colonial libraries. As Dr. Reinsch says in his thesis on the English Common Law in the Colonies (Bulletin Univ. of Wis. no. 31, Mad. Wis. 1899): "The process which we may call the reception of the English Common Law by the colonies was not so simple as the legal theory would lead us to assume. While their general legal conceptions were conditioned by and their terminology derived from the common law, the early colonists were far from applying it as a technical system; they often ignored it, or denied its

subsidiary force; and they consciously departed from many of its most essential principles. This was but natural; the common law was a technical system adapted to a settled community; it took the colonies some time to reach the stage of social organization which the common law expressed; then gradually more and more of its technical rules were received." (p. 58.)

After being dormant for nearly one hundred and fifty years, the vital power of common law displayed itself from 1750 onward. At first mainly on its public side, as a basis for argument in the appeals for civil liberty; later, in its general aspect, in the local courts under the influence of lawyers trained in the Inns of Court. It would be hard to overestimate the influence in the colonies of lawyers trained in these Inns. Winthrop, Bellingham, Dudley, and Ward all had studied law in the Inns, and the recent catalogue of notable Middle Templars shows upon its list the following who signed the Declaration of Independence: Charles Carroll of Carrollton, Middleton, Rutledge, McKeen, and John Dickenson and Arthur Lee. The continual discussion and publications of such men as these, not only trained them, but prepared the public for the federal laws and constitution and the state constitutions.

At the end of three hundred years, the resemblances between the common law in America and its parent in England are greater than the differences, and the differences are rather in degree than in kind. Each has borrowed from the other's statute law; the American more from the English unwritten law. The common law in America has the same adaptability and generality, but publicity is greater here both in civil and in criminal cases. In the former there is an excess of publicity, both in the progress of trials and through the newspapers. In jury trials the American courts are more dilatory and more spectacular than the English courts. In some of the Western states a criminal trial gives attorneys an opportunity to advertise that is "worked for all that it is worth." There is much less freedom of comment on evidence and law by the judges in America than in England, and the relation between the judges and the jury is less close. In two respects there has been a departure from the English theory. These are the theory of constitutional law, especially as to the power of the court to pass on the constitutionality of statutes, and in the source of grounds for decision by the judges. In the latter case in some of the states there seems to have been developed a substantially different theory from that shown in the discussion of Calvin's Case.

As I have tried to show, the factors that have contributed to make the characteristics of the common law were popular and professional; the same factors are seen in America. At the close of the Revolution there arose need of a system of law in each of the

states. There was uniform agreement that the shortest cut to providing one was to adopt the common law of England. This was done in all the states, with the limitations that it was not to apply when inconsistent with local limitations or conditions. This exception gave the judges a discretion in applying common law that has tended to establish a practice of departing from a rigid rule or precedent, and instead to apply a standard suggested by the needs of the people or local conditions. A second influence came from the different social position of lawyers in America. In England the bar was allied with the Crown. In America the sovereign power after the Revolution resided in the people. This made the English lawyers more conservative. In America, while they were an aristocracy, they were in touch with the people and responsive to popular ideas. A third factor is that the judges in many states are elected by the people and inevitably are affected by the interests of their electors more than by an abstract system of law. A fourth influence is the general indifference of Americans as to authority from the past. And a fifth is the American characteristic to ask for results that are practical and tangible rather than those that support a theory.

There is a considerable but not yet classified body of decisions that illustrates this tendency of the courts to adapt the law to popular need and local conditions. One case only will be chosen to illustrate this. It is the case of Katz *v.* Walkinshaw (141 Calif. 116). Before speaking of this case, it is necessary to refer to the case of Lux *v.* Haggen (69 Calif. 255). The question in the latter case was whether an upper appropriator of water, which he applied to general and public use, had a better right to the water of the stream than a lower and earlier riparian proprietor. It was contended that the public welfare demanded that the later right should prevail over the earlier. There was a California statute adopting the common law. The local arid conditions, the necessity for irrigation, were urged as reasons for modifying the rule of the common law restricting the taking of water from a stream to a reasonable use measured by the needs of other riparian proprietors. But to this proposition Judge McKinstry replied, "While the argument *ab inconvenienti* should have its proper weight in ascertaining what the law is, there is no 'public policy' which can empower the courts to disregard law; or because of an asserted benefit to many persons (in itself doubtful) to overthrow settled law. This court has no power to legislate, especially not to legislate in such manner as to deprive citizens of their vested rights." (69 Calif. 299.) "We know of no decision which intimates that a difference in climatic or geographical conditions may operate to transfer a right of property from those in whom a right of property is vested by the common law." (69 Calif. 306.) The later case of Katz *v.* Walkinshaw raised a question as to rights in percolating

water and seems to have been decided upon a different principle, and one which illustrates the proposition I have stated. The question was whether an owner of land could pump percolating water from his land and sell it for a general use on remote land, if thereby he deprived the adjoining landowner of percolating water in his land needed for use on his land. By the common law, each party had an equal right to percolating water without restrictions from the corresponding right of the other. But the court held that local conditions required a departure from the common law, and on the principle of utility — of a fair use of the water, so as to secure the greatest benefit to the greatest number — decided that the defendant could not sell the water, if thereby he exercised an unreasonable use measured by the needs of the adjoining plaintiff. It would seem that the rule of property that probably existed in California as to percolating water was departed from in this case, and in its place one laid down based upon public utility.

In this case, the court adopts the view that the law is a practical science to be applied so as to conserve the interests of the people to whom existence is the main problem of life, and not that it is a philosophical theory to be applied according to the wishes of the expert and to conserve an ideal and immutable professional standard.

This theory of utility was advanced by the late Austin Abbott in a paper read before the section of legal education of the American Bar Association in 1893, in which he spoke as follows: "Existing American jurisprudence looks to the actual situation of affairs. All the phases of jurisprudence treated in books are tributary to the wisdom and caution necessary in working out the development — now slowly going on, whether we recognize it or not — [of] the jurisprudence of utility, a jurisprudence which recognizes the unspeakable value of all the traditions of the past, and respecting the limit of statutory command, seeks also for the premises to be found in the welfare of the community, and reasons from them, too, in ascertaining what premises are suitable to be received as governing the administration of law among our people. It would be easy to show that this change in the conception of law is necessitated by our condition, and that its future advance is inevitable." (Vol. 16, Rep. Am. Bar Ass'n, p. 374.)

It remains to contrast the legislative and judicial functions in America at the present time.[1]

The legislative functions are discharged by representatives. They make general laws for future public needs. To insure this, the representation is broad; all classes are concerned and should have a voice. There is no test of fitness excepting age and citizenship; and broad

[1] On the distinction between the legislative and judicial functions, see the admirable paper by Reuben C. Benton, 8 Am. Bar Ass'n Rep. 261 (1885).

representation is not inconsistent with a low grade of intelligence. The representatives are directly interested in the subject-matter of legislation. They legislate for themselves and their constituents. In a sense it is optional whether the laws they enact shall be obeyed or go into desuetude. The judicial functions are discharged by representatives. They prescribe a rule governing a past concrete transaction between definite individuals. There is a fitness required for the discharge of this function determined by education and public test at the bar. The representation is narrow with a high grade of intelligence. The judges are disinterested — they are umpires with a power behind them to enforce their judgment. The fundamental difference between legislative and judicial functions is that the former is an effort to answer an indefinite number of hypothetical questions to arise in the future — the latter, a definite answer to an existing question raised in the past.

But the tendency of modern American courts is so to formulate their judgments as to provide an answer to hypothetical questions between future litigants. In this sense there is a tendency on the part of the court not merely to legislate specially but broadly.

There is a theory that legislation is a conscious expression of the jural needs of the people. Statutory laws are said to be "analogous to the voluntary resolutions of a person for self-improvement." [1]

Another says, "A people's thought, habit, will, and purpose infuse themselves into and make the law." [2]

This view is consistent with compact and homogeneous communities where the connection between the public and the law-maker or judge is close, but it is submitted that in America, excepting on great public questions on which public opinion is strong, legislation does not reflect public opinion and frequently is special legislation in disguise. This is an unfortunate result of the indifference of the public, of our system of legislation, and of "the truth often illustrated that a small body of men deeply interested and able easily to coöperate is more powerful than a vast body of men less deeply interested and unfavorably circumstanced for coöperation." [3]

It is submitted that the same truth holds good where a body of professional experts dealing with a special kind of learning intervenes between the public and the expression of public needs in the courts, and that thereby the public voice is not effective in declaring its jural needs. It is believed that the characteristics of law are affected by the source of the law. This source is either popular or professional. The former contributes simplicity, adaptability, and progress — the latter technicality, rigidity, and conservatism. In

[1] Address of Mr. Carter, President of the Am. Bar Ass'n, 1885, p. 224.
[2] Address of Mr. Tucker, President of the Am. Bar Ass'n, 1893, p. 206.
[3] *Autobiography of Herbert Spencer*, vol. I, p. 433.

America law has become a practical science, and the problem of adjusting the ideals of the expert to the comprehension and needs of the common person is being worked out with the aid of the disposition of the American to favor common sense rather than abstract theory.

It remains to inquire whether there has been developed in America an entirely different system of law, to ask whether there is a system of federal common law. It is not within the scope of this paper to try to answer this question, even if there were data enough on which to base an answer. If the courts should deem it necessary to affirm that such a body of law exists, — and on the old theories there seems no difficulty in imagining this, — the gradual disclosure of it through successive decisions will be one of the most interesting phases of the growth of law.

SECTION A — HISTORY OF ROMAN LAW

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(*Hall* 11, *September* 21, 3 *p. m.*)

SPEAKERS: MR. WILLIAM HEPBURN BUCKLER, Baltimore, Md.
PROFESSOR MUNROE SMITH, Columbia University.

THE RELATIONS OF ROMAN LAW TO THE OTHER HISTORICAL SCIENCES

BY WILLIAM HEPBURN BUCKLER

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OUR language has been compared to a vast museum filled with historical monuments which are its words: among these there are few more significant than the word Jurisprudence. To the Romans this meant a knowledge of their own particular law, while for us it has come to denote the science of general legal principles. Thus it confronts us as a record of the past, reminding us that though our laws as they stand may not be of Rome, yet surely their foundations are upon her holy hills.

The much abused quotation about Peace and her victories is eminently applicable to that quiet but steady extension of the legal influence of Rome which is evidenced by the history, not only of law but of other forms of human activity. Indeed, I think it can be shown that none of the historical sciences, whether of Law, or of Politics, or of Economics, or of Religion, or of Literature, or of Language, or even of Art, lies wholly out of reach of that mighty influence. In whichever of these branches of learning a man may engage, he can fairly say, "*Iuris civilis nihil a me alienum puto.*"

To develop this proposition here with anything approaching to completeness would be an impossible task. I can only attempt to indicate its outlines, and to bring out some points of contact between Roman law and the other sciences commonly called historical.

I

The first to be considered is the history of Law, since here the connection is, as might be expected, more intimate than anywhere else. A discussion of the influence of Roman law upon other legal

systems must deal with two classes of Western states: first, those in which this law has survived down to our own time as the result either of inheritance or of what the Germans call "reception"; secondly, those like England or the American Commonwealth in which pure Roman law has been rejected.

There are indeed vast regions in which other venerable bodies of law, such as the Chinese and the Muslim, have long held sway, but these we may here disregard, since their history has kept aloof from that of Western law. We may sometimes have felt with Gibbon "the hasty wish of exchanging our elaborate jurisprudence for the simple and summary decree of a Turkish cadhi," but further than this we have never gone. And the Eastern nations, with the single recent exception of Japan, have on their part done nothing to put themselves in touch with our Western legal systems. The only direct effect they ever had upon these was to destroy the Eastern Empire, and with it the Roman law which had flourished at Constantinople for more than a thousand years. We may therefore confine our inquiry to the two groups of Western states already mentioned.

Sweeping generalizations are in history even more odious than comparisons, but I think there is one that can safely be made as to the group of states which, like France and Germany, have either inherited or "received" the Roman law. It is that in those states, wherever that law was not an actual relic of Roman rule, its supremacy has finally been recognized, not through conquest or compulsion, but owing to the attraction of its intrinsic excellence. The reception of Roman law in Germany in 1495 has been regarded as a case of official compulsion. Recent research, however, has shown that the *vocabularius iuris utriusque*, the *collectio terminum legalium*, and other popular encyclopedias of Roman law had a great manuscript circulation in Germany for more than a century before the reception, and that one of them went through fifty-two printed editions in the fifty years between 1473 and 1523.[1] Hence it appears that when Berthold of Mainz proposed the establishment of the *Reichskammergericht*, with its civilian doctors as judges, his action was only the outcome of a movement which had long been in silent preparation.

The peaceful reconquest of the European continent by Roman law began with that revival of its study in the Italian universities at the end of the eleventh century, which was one of the greatest eruptions of intellectual energy that the world has ever seen. It may perhaps best be compared to that enthusiasm for the natural sciences which began at the end of the eighteenth century, which Taine has described as one of the factors in the French Revolution, and in the midst of which we still live. As biology and physics now

[1] Seckel, *Gesch. beider Rechte im Mittelalter*, p. 59.

flourish because they are popular, not because they are compulsory, so did the study of Roman law in the Middle Ages. And just as there are now some who deplore that scientific men should derive wealth from their science, instead of being content to pursue it from pure love, so the twelfth century complained that many cultivated the law, not for its beauty, but for its profits. There was, however, much genuine intellectual fervor which spread from Italy even to Paris and Oxford. That is a pretty story and one very characteristic of the period which Professor Holland has preserved, of the two Frisian brothers, Emo and Addo, taking turns at Oxford to sit up all night copying the law-book of Vacarius.[1] Peter of Blois, a Frenchman who had studied in Bologna under the great Irnerius and who became Archdeacon of Bath, informs us that he used to read the *Code* and *Digest* for sheer enjoyment. He has even described to us his own enthusiasm for legal studies, which was doubtless typical. "That ancient law," he says, "with its magnificent furniture of words, had powerfully enticed me and had intoxicated my mind."[2]

There was, indeed, some opposition to this legal furore, partly because it distracted the minds of the clergy from their spiritual duties, partly because it was thought to add to the law's delay, and partly because it conflicted with ancient customs of the land. Thus it has been shown that the famous prohibition of the teaching of civil law at the University of Paris, by Pope Honorius III in 1219, was issued at the request of the French king, who did not wish his dominions, which like England had their indigenous common law, to be invaded by a new and foreign legal system.[3] The Constitutions of Clarendon in 1164 had represented a similar English protest couched in a different form.

But despite occasional checks the Roman law has, except in the case of Hungary, swept steadily and victoriously over the whole continent of Europe. This result has been largely due to the influence in early times of the clergy, the backbone of the educated class, who had in their canon law a borrowed and dilute civil law, and who also studied the pure civil law with much diligence. In 1245 the great lawyer Fieschi, better known as Pope Innocent IV, made provision for the teaching of Roman law at the Papal capital, and his name deserves to be particularly honored by students of jurisprudence, since he is said on high authority to have been the first jurist who distinctly conceived the *universitas*, our corporation, as a fictitious person.[4]

The history of the spread of Roman law throughout the European continent and in other parts of the world need not and

[1] *English Hist. Review*, vol. VI, p. 247.
[2] Petrus Blesensis, Epist. 26, in Migne's *Patrologia*, vol. 207.
[3] Beaune, *Fragments de Droit et d'Histoire*, p. 97.
[4] Maitland's preface to Gierke's *Political Theories of the Middle Ages*, p. xix.

cannot be told here in detail: to do so would require a volume for each country. We all know the result to be that at the present date, notwithstanding the rapid growth of our own commonwealth, more people are living under the legal system derived from Rome than under that derived from Westminster Hall.[1] Germany parted company with the Roman group in 1900, but her new imperial code shows the influence of Roman conceptions, and just as the New York codes have not altogether banished Blackstone from New York, so it can scarcely be expected that a nation trained in the *Pandekten* will soon forget their principles. An eminent French scholar has shown that to understand fully the French dotal system we must go back to the *SC. Velleianum*.[2] And it is well known that the *Code Napoléon*, which in its turn has had a contagious influence somewhat similar to that of Justinian, is fundamentally Roman. It is interesting to note in passing that this Exposition commemorates among other things the important fact that, by the cession of the Louisiana territory, a vast area was withdrawn from the sway of that modern Roman code, though in the state of Louisiana where the *Code Napoléon* had taken firm root, it still continues to flourish.

There can thus be no doubt that the history of Roman is vitally connected with that of Continental law. Indeed, if we adopt the view of historic continuity which Freeman inculcated, we may say that the history of law on the Continent is simply the history of Roman law brought down to the present date. It need hardly be said that I have not taken into account that form of speculation on abstract legal principles best known by its German name *Naturrecht*, which cannot be said to have any historical connection with the *ius naturale* of the *Digest*, and which is quite un-Roman both in its matter and in its methods.[3]

When we turn to consider how Roman law is related to that other great legal system which was built up in England, and transplanted to this country and to her other colonies, we find the sailing by no means plain. In theory, of course, Roman law is an absolute alien to us, and our own law has an unblemished Teutonic pedigree. But we may at once suspect some flaw in this theory when we find it stated that in England at the beginning of the last century, in the Spiritual Courts, the Military and Admiralty Courts, and the courts of both universities, "the civil law and its form of legal proceedings greatly prevail."[4] Since these may be looked upon as so many reservoirs of Roman law, the question is, did they ever leak? Did the civil law, and if so, how far, ever percolate through the pen

[1] Bryce, *Studies in History and Jurisprudence*, p. 74.
[2] Gide, *Etude sur la Condition de la Femme*, p. 429.
[3] See Lorimer's *Institutes of Law*, 1880.
[4] Butler, *Horae Juridicae Subsecivae*, p. 77.

of text-writers or the mouth of judges into the bed-rock of common law or equity doctrine?

Sir H. Maine thought this had taken place on a very large scale at an early stage in English law through Bracton's borrowing from the Italian civilian Azo, and he accused the English judge of having made up a third of his treatise out of Roman law and having palmed it all off as English. But this charge will scarcely hold, since Professor Maitland has shown that Azo has supplied only one fifteenth and the *Corpus Iuris* only one fortieth of Bracton's material.[1] The fact is that unmistakable instances of the importation of a Roman rule into an English text or an English decision are very hard to find. Sir Frederick Pollock has found only one, and Professor Maitland has mentioned another;[2] and where such explorers have been over the ground, the treasure still unfound must indeed be insignificant. But there may be smuggling as well as regular importation of legal ideas. And this sort of smuggling may, as in the case of literary plagiarism, be partly unconscious and therefore all the harder to trace. A good instance of the difficulty of ascertaining whence any given rule in English law was derived is the conflict of high authorities respecting the origin of the exceptional liability of common carriers. On this point Sir William Brett and Mr. Justice Story are opposed to Lord Cockburn and Mr. Justice Holmes; the two former holding that the rule of liability was adopted from the Roman law, while the two latter think that it was not.[3]

The relation between Roman and English law is probably closer than we think or than we shall ever be able to prove, because it was, so to speak, illicit. This is explained in the *De Laudibus Legum Angliae* of Chancellor Fortescue. When the Prince asks why his ancestors had failed to introduce the civil law into England, Fortescue replies that the English regarded it as an instrument of tyranny. The same feeling was displayed more than a century after Fortescue in the violent attack made by Parliament on Cowell's *Interpreter*, a book which undertook to point out the resemblance between Roman and English law. Clearly, therefore, if an Englishman borrowed from the civil law, he was not likely to admit the debt. "For obvious reasons," as Mr. Bryce has said, "the Chancellors and Masters of the Rolls did not talk about Nature, — they referred rather to the law of God and to Reason. But the ideas were Roman, drawn either from the Canon Law, or directly from the *Digest* and the *Institutes*."[4] If we wish an indirect proof of this statement —

[1] Maitland, *Bracton and Azo* (Selden Soc.) introd.

[2] Pollock, *Nature of Jurisprudence*, p. 326. Maitland, note to *Canon Law in the Church of England*.

[3] Sir W. Brett in Nugent *v.* Smith, L. R. 1 C. P. D., pp. 28–30; Lord Cockburn in same volume, pp. 428–30; O. W. Holmes, Jr., *Common Law*, p. 181.

[4] Bryce, *Studies in History and Jurisprudence*, p. 599.

for direct proof is not yet forthcoming, — we have only to read a few pages of Story's *Equity Jurisprudence,* or of his treatises on Partnership or on Bailments, in all of which he quotes from the *Institutes* and *Digest,* often in the text, still oftener in the notes. We can scarcely avoid the conviction that the parallels which he constantly draws between Roman and English rules are more than accidental. This problem has not yet been fully worked out, and probably cannot be, till the early records of the English Ecclesiastical Courts are published and studied. But the results hitherto attained show that the borrowing of Roman principles was carried out in England, not by wholesale, but in small and haphazard installments. In early English law it is admitted that *possessio* influenced the conception of seizin, and *laesa maiestas* that of treason.[1] At a later day the Court of Chancery was similarly influenced in dealing with mortgages and with uses and trusts, while in the construction of documents and wills it naturally followed the Ecclesiastical Courts, and borrowed its rules from the fiftieth book of the *Digest.*[2] Blackstone rightly ascribed to Roman sources the practice of hotchpot and the rules for the distribution of personalty.

It is interesting to note how this affected the great lawyers of the seventeenth century. Sir Edward Coke was as far as possible from being an enthusiastic civilian, yet even in his work may be found traces of Roman influence, though possibly he was not aware of it. For instance, he gives the rule, "*Nullus commodum capere potest de iniuria sua propria,*" which is merely a slightly altered form of the *Digest's* "*Nemo ex suo delicto meliorem suam condicionem facere potest.*"[3] In another place he quotes from Bracton the rule on testamentary ambiguity, "*Benigne interpretari et secundum id quod credibile est cogitatum.*" Here, though his language is different, his use of Marcellus's phrase "*benigna interpretatio*" seems to confirm the Roman origin of the rule.[4] The same may be said of the somewhat longer statement given by Coke of the rule "*ratihabitio mandato comparatur.*"[5] Turning to Coke's great adversary, we find in his work also distinct traces of the civil law, though it has been said that Bacon had only a "bowing acquaintance" with it. In his lectures on uses, for instance, he draws a comparison between the use and the *fidei commissio,* and in his short essays on legal maxims he supports at least two rules by citations from Roman sources.[6] To one rule which he has stated he adds: "These be the very words of the civil law." More extracts of this same kind could be collected from other English law-writers of the seventeenth century; and after making due allowance for the hostile attitude

[1] Pollock & Maitland, *History of English Law,* vol. II, pp. 46 and 503.
[2] Scrutton, *Roman Law and the Law of England,* p. 157.
[3] Coke, *Inst.* 148b.
[4] Coke *Inst.* 36a. *Dig.* 34, 5, 24.
[5] Coke, *Inst.* 207a; *Dig.* 46, 3, 12, 4.
[6] Bacon, *Maxims,* Reg. 3 and 11.

of the Inns of Court, I think such extracts are just what we might expect to find. For there can be little doubt that the classic sources of Roman law were in that century more or less familiar, not only to those who had prepared for practice in the Court of Arches and Doctors' Commons, but to all well-educated men. Professor Maitland has shown in his delightful Rede Lecture that England under Henry VIII was in some danger of having a "reception" of her own;[1] a permanent result of which was that at her universities, where no English law was taught until 1758 at Oxford and 1800 at Cambridge, there have been Regius Professors of Civil Law since Henry VIII's time. Some of them, like Alberico Gentile, Sir Thomas Smith, and John Cowell of *Interpreter* fame, were of far more than mere academic reputation. It must be remembered, too, that the books of Justinian, though to us they seem foreign, are in a language which to the English of the seventeenth century was still the literary vernacular of all the learned professions. The Roman law had then begun to supply what Sir H. Maine has called the *lingua franca* of universal jurisprudence. That it should not have had some influence even on English judges and legal writers is almost inconceivable.

We may here consider the origin of that best known modern product of Roman law which is usually associated with the name of Hugo Grotius. International law, at least in its classic literary beginnings, is admitted to be of Roman mould, and a very slight acquaintance with Grotius's famous book will suffice to convince any one of that fact. Two points are of special interest in this connection; first, that the work of the Italian civilian Alberico Gentile, Regius Professor of Civil Law at Oxford, has lately been shown to be the model on which Grotius improved;[2] and secondly, that the great John Selden answered Grotius's earlier book *Mare Liberum* in learned reply which shows what excellent knowledge of Roman law an English lawyer could possess. Selden prided himself on being a common lawyer, and certainly had no mean grasp of the common law and its history, as any one will discover who looks at his notes on Fortescue and his book on Fleta. Yet he answered Grotius in a style on which few civilians could have improved. His very description of his opponent as "*rerum humanarum atque divinarum scientissimum*"[3] is an echo of the well-known Roman definition. While he cites Bracton and Fleta, and resorts to English archæology by introducing the ship on the rose-noble of Edward III as a proof of English supremacy over the sea, yet most of his authorities are from the *Code* and *Digest*, and his learning extends even to the Theodosian Code. He speaks of princes becoming *sui iuris* by prescription; and

[1] Maitland, *Canon Law in the Church of England.*
[2] Walker, *History of International Law*, p. 335.
[3] Selden, *Mare Clausum* (1636), p. 196.

in his notes on Fortescue he contrasts the "issue" of English with the *litis contestatio* of Roman procedure. Selden's case would alone suffice to show that the civil law was in his time no *terra incognita* to learned English lawyers, though it may well be admitted that few were so learned as he.

Of early international law as such there is not much to be noted beyond the fact already mentioned that it was founded and built on Roman law. If, for instance, we wish to know where Grotius got his idea of *postliminium*, we turn to the *Digest*, and similarly with his conception of *ius gentium* and *ius naturae*. Neither of these was to him an abstract system founded on pure moral reasoning, — witness his inclusion of rules on lying and deceit among the rules of the law of nature, — but he thought with Gaius that *ius gentium* was that law "which is observed among all mankind equally on principles of natural reason"; and he based his law of nature not on abstract ideas but on the necessities of social intercourse.

For our present purpose the most interesting point to notice in the classical writings on international law is the way in which the texts of the Roman jurists are there treated as repositories of *ius gentium* and of *ius naturae*. Roman law seems in fact to have been regarded, even by men like Selden, as a sort of universal common law, the principles of which should prevail wherever they were not superseded by some local system. As there is obviously no such system applicable to international relations, the supremacy of Roman law in that sphere was everywhere admitted. Such a view had two important results. The connection of international law with a compact and well-understood mass of written law has caused it to be treated, except by strict analysts like Austin, as something very different from international morality. And on the other hand the recourse to the Roman jurists for the settlement of international questions still further increased the tendency to regard Roman law as embodying principles of universal validity.

While the classical jurists are even now by no means obsolete, as was shown in the Behring Sea arbitration, yet most of the unsettled questions of the present day, such as the definition of contraband or the control of wireless telegraphy, will not be determined by reference to Roman texts, but by the common assent of nations. The service rendered by the Roman jurists to early international law lay precisely in the fact that they were regarded as voicing this common assent, and that their writings commanded obedience, although nobody perhaps could clearly have explained why.

We have thus seen that while Roman law has influenced the law of England, and has virtually originated that of Continental Europe, its chief triumph has been the creation of a system of world-wide law, such as would have delighted the heart of the philosophic Ulpian.

As an outcome of the successful career which has been thus briefly sketched, Roman law became the parent, not only of the word jurisprudence, but of the science which that word denotes. For centuries all over Europe grammar was studied, and in England is still studied, in the concrete form of Latin grammar. In exactly the same way, the science of legal principles was studied through the medium of Roman law. The legists and canonists of the Middle Ages and the Renaissance knew of no other medium, and even in the English universities this law was all-powerful. When Austin founded the modern science of jurisprudence nearly one hundred years ago, although he worked in a non-Roman atmosphere and belonged to the school of Bentham and James Mill, who respected the *Digest* as little as they did Blackstone or the French doctrine of natural rights, it is interesting to note how little he succeeded in escaping from the clutches of the Roman law. Not only did he use the *Corpus* very largely as material for his analytical dissecting-knife, but when he gave the results of his analyses, he merely did on a broader scale and with greater elaboration just what a Roman jurist used to do when he constructed a definition of *furtum* or *possessio*. The study of Roman law was just then beginning to enjoy on the Continent, in common with other branches of historical science, the greatest of all its revivals. In the powerful hands of Savigny and his followers, its principles were being dragged out from that "disorderly mass" which offended James Mill,[1] and were making splendid additions to the material of juristic science. Soon afterwards the historical movement started by Savigny was extended to remoter regions, and helped to found the modern study of comparative jurisprudence. This was signalized in a striking way when in 1831 the Collège de France established simultaneously the chair of Archæology for Champollion and that of Compared Legislation which was soon filled by Laboulaye. In England Sir Henry Maine and his school did as much for the promotion of comparative jurisprudence as they did for the revival of Roman law. Since then the comparative method has developed the still more modern science of ethnological jurisprudence, which places the customs of the negro, the Chinaman, and the Bushman on a level with the laws of the Roman, regarding them all, not as coincidences, but as emanations of a common human nature.[2] Though these newer and broader methods of investigation might seem destined to supersede the study of Roman law to which they owed their birth, such a thing is never likely to occur, simply because the backward races present to us only primitive conceptions in a few subjects such as property, slavery, or marriage, whereas the Roman law was adapted to a high and complex civiliz-

[1] Mill, *Jurisprudence* (1822), p. 5.
[2] A. Post, *Grundriss der ethnologischen Jurisprudenz.*

ation similar to our own. It must for many years, if not always, remain true that Jurisprudence cannot repudiate its relationship or sever its filial connections with Roman Law, except at the cost of great injury to both.

II

The connection between Law and Politics is so close that some writers like Montesquieu and Bentham have been equally interested in both sciences. Therefore Roman law in its influence on legal development could not fail to be also a factor in politics, both actual and theoretical. Political conditions may be said to be a resultant of social forces and of abstract ideals, acting and reacting upon one another; and thus political theory is always a factor in actual politics. But the actual and the theoretical should be kept distinct and be separately treated. After the downfall of the Western Empire, and with it of the rule of pure Roman law in many parts of Europe, the history of actual European politics can only be understood by studying various concurrent influences, such as Christianity, Teutonic custom, incipient feudalism, etc. Among such ingredients the Roman law must always be counted, but as to how far it may have affected each individual country no general statement can be made.

In two great constitutions, however, those of the Medieval Empire and of the Medieval Church, the legal example of Rome was paramount. For five hundred years she had established both in principle and in practice that her *princeps* should be the supreme potentate of Europe, so that when Charles and Otto were crowned Emperors at Rome it was naturally held that the principate was continued in them. But unfortunately the successors of St. Peter also aspired to fill that same office, on the ground that the supreme head of the Church must be the rightful occupant of the imperial throne. Thus Gregory VII claimed the rights of Cæsar as well as those of Pontifex Maximus, and insisted that Henry IV was subject to his jurisdiction. Indeed, the tremendous struggle between Pope and Emperor, which for centuries was the storm-centre of European politics, was simply a long dispute as to which of these rulers was that mighty *princeps* described in the *Digest*, who was *legibus solutus* and whose will had the force of law. The head of the Church got the better of the controversy so far as real power was concerned, for it is well known that the imperial authority, though immense in theory, was, except in a few instances, very shadowy in fact. Again in the organization of the Church Roman law had a great effect, for — as Professor Harnack has pointed out — we have in the great system which centres at the Vatican a fair copy, surviving down to the present day, of the administrative organization of Constantine and Justinian.[1]

[1] Harnack, *History of Dogma* (trans.), vol. I, p. 122.

Apart from its lessons to the Church and Empire, the civil law supplied to the rest of Europe that famous maxim *quod principi placuit*, etc., which was so unpopular in England. This, in combination with Church doctrines, did much to fortify, if not to produce, the system of absolute monarchy which generally prevailed on the Continent till the French Revolution, and which is even now not entirely dead.

When we come to consider political theory as expressed in literature prior to the Reformation, it is certain that all writers on the subject owed much to Roman law. Aristotle, the Bible, the Fathers, and the texts of Roman jurists are the armories from which most of their controversial weapons are drawn. The work done by the medieval legists and canonists in developing political theory has not been sufficiently studied.[1] But they were still for the most part too thoroughly possessed with the idea of a single world-empire to be capable of speculating independently as to the origin and nature of sovereignty or of the state. The best known political writings of that period were merely briefs for or against the Pope or his rival. Thus St. Thomas Aquinas argued that, since government was devised to promote the highest good of man, and this consisted in the fruition of God, the head of God's Church on earth should be the supreme ruler. In his *De Monarchia* on the other hand, Dante maintained the view that the Empire of his day was the legitimate successor of the Roman Empire, and attacked the Pope's pretensions to supremacy. He made a legal argument to show that the alleged Donation of Constantine, if genuine, was invalid, and that Leo could not have had the right to bestow the imperial office on Charles the Great. Dante was convinced that the world had never been so well governed as when it obeyed a single ruler.[2]

During the Renaissance, Bodin and Machiavelli, the founders of the modern science of politics, were able to inquire, with far less partisan bias, into the foundations and functions of the state. But as they worked in the legal atmosphere of the time, which was one of Roman law, they naturally arrived at theories of absolute monarchy, similar to that which we see depicted in the *Corpus Iuris*, though they would both have agreed with Julianus that the ultimate basis of law lies in the popular will.[3] Though Bodin insisted that Roman law was dead and possessed no general authority, his conception of the family was purely Roman, and he was unable to conceive of a king as subject to constitutional control.[4] Machiavelli was particularly enamoured of Roman examples in politics. He admired the Roman Republic far more than the Empire, yet for

[1] Maitland, Gierke's *Political Theories*, &c., p. 101.
[2] *Convito*, IV, 5.
[3] *Dig.* 1, 3, 32, 1.
[4] Fournol, *Bodin prédécesseur de Montesquieu*, p. 55.

practical purposes he advocated the absolute power of a prince. His works had much influence on English political writers in the age of Elizabeth and strengthened their arguments in favor of absolutism.[1] The *Digest* was still recognized as a repository of valuable citations, for John Knox made use of it in attacking the "regiment of women," and the civilian Gentile resorted to it when writing in support of James I's royal prerogative. But after the early seventeenth century its direct authority in political discussion seems to have declined.

The conception of natural law which figures in the works of political theorists both before and after the Renaissance, can trace its history directly back to the texts of Roman law; but, as Mr. Bryce has shown in one of his *Studies*,[2] the precise scope and force of natural law were so differently viewed by different writers that it would be impossible here to summarize their opinions. It is now well known that the theory of the law of nature, borrowed from the Roman jurists by St. Isidore of Seville, passed from him into Gratian's *Decretum*,[3] and that by thus becoming embodied in the canon law it was familiar to European thought even before the study of the Roman texts was revived.

The most famous theory of modern politics, that of the Original or Social Compact, did not become conspicuous till the end of the sixteenth century and the beginning of the seventeenth, although in a medieval form it had appeared as far back as the eleventh century.[4] Its introduction into modern thought is due to the German Johannes Althusius, the Englishman Richard Hooker, and the Dutchman Hugo Grotius. Their position, as stated by Hooker in the *Ecclesiastical Polity*, was that there are two foundations of public societies; first, natural inclination; secondly, "the order expressly or secretly agreed upon touching the manner of their union in living together." This view of the origin of the state was adopted in various forms by Hobbes, Locke, and Blackstone, but its most famous exponent is Rousseau, who carried it to extremes undreamt of by its first authors. Its significance for our present purpose is that it clearly seems to have been suggested by those passages from the Roman jurists which declare law to be *communis rei publicae sponsio*, and which describe custom having the force of law as *tacita civium conventio*.[5] For if law could be regarded as the product of an agreement between the citizens of a state, it needed but a short step to find in a similar agreement the origin of the state itself.

There can thus be no doubt that, at least down to the period of the

[1] Dyer, *Machiavelli and the Modern State*, pp. 58, 77; Einstein, *Italian Renaissance in England*.
[2] Bryce, *Studies*, &c., pp. 593, 597.
[3] *Ibid.* p. 594. Carlyle, *History of Medieval Political Theory*, p. 106.
[4] Carlyle, *op. cit.* p. 62.
[5] *Dig.* 1, 3, 1, and 1, 3, 35.

French Revolution, the history of politics, whether in theory or in practice, could not possibly be understood without some knowledge of the Roman law and its effects.

III

That Economics are closely connected with both Politics and Law is strikingly illustrated by the fact that *The Wealth of Nations* was an expansion by Adam Smith of one third of a course of lectures, the other two thirds of which dealt, first, with Public Jurisprudence, and secondly, with Domestic Law.[1] Mr. Ruskin has expounded the Political Economy of Art, but the Political Economy of Law is too obvious to need pointing out. Roman law has, however, a special value for the student of Economic History, because its records are practically his only source of information for a most important period. Professor Ramsay has explained the difficulty of investigating social and economic facts under the Empire. "Historians," he says, "are so occupied with the great events, the satirists so busy with the vices of upper-class society, the moralists with abstract theorizing, the poets with Greek mythology, and with the maintenance of their footing in the *atria* of the rich . . . that they have neither time to write about the aims of imperial policy, nor eyes to see them." "Here," he adds, "we must trust to our second class of authorities, the inscriptions and the laws." [2]

No reader of the *Digest* can fail to have been struck with its wonderful collection of little vignettes — one might almost say snap-shots — illustrating social conditions under the Empire. We catch vivid glimpses there of capitalists, tenant-farmers, artisans, slaves, freedmen, and even children. We see them driving up the *Clivus Capitolinus* or playing ball, as well as buying or selling or making their wills. It is a great storehouse of social data, and we may be thankful that the tough casing of the law has preserved them. Moreover we now enjoy the light which of late years has been shed on them by archæologists and epigraphists. Facts as to taxation, administration, imperial and municipal finance, the conduct of shipping and other industries, may all be found in that mine which Mommsen and Marquardt have so brilliantly exploited.[3] But the value of the collection to the economic historian may perhaps best be illustrated in two instances, banking and the organization of labor.

The *Digest* is full of information about bankers and banking. It has been pointed out that the Roman Empire, especially after the time of Caracalla, suffered from lack of means for accumulating capital, owing to the scarcity of bullion and the insufficiency of

[1] Cannan's edition of A. Smith's *Lectures on Justice, Police, &c.*, 1896.
[2] Ramsay, *The Church and the Roman Empire*, p. 184.
[3] See especially Marquardt, *Röm. Staatsverwaltung*, vol. I, pp. 165–268.

banking facilities.[1] While these conditions doubtless existed, and it is certain that the credit system was crude and primitive compared with that of the present day, yet we can see in the *Digest* that the functions of the Roman *argentarii* must have considerably relieved the strain on the metallic currency. This was partly recognized at the time, for the banking business is expressly stated to be of public utility; and since the recent excavation of the Basilica Aemilia in the Forum, where the principal banking-offices were situated, and the marble pavement of which is still strewn with remains of their coins, we know that in Rome, at least, the state provided well for their comfort. It is safe to infer, from the silence of the *Digest*, that even its compilers in the sixth century had never heard of negotiable instruments or of bills payable to bearer; yet the bankers of the Empire did many things to facilitate commercial transactions. They received money on deposit in the modern way, the sum deposited becoming a debt due to the depositor, and they made payments for his account on his written order. They could transact for a client all sorts of sales, collections, investments, and other business, make loans on his behalf, and issue drafts on correspondents in other cities. When Cicero sent his son to Athens, he provided him with means of drawing money when he got there, though we cannot suppose that he gave him a bill of exchange. He probably got from his banker an order on some Athenian bank, or else bought a debt payable in Athens. Branch banks could be managed by agents or by slaves, and we know that the banker might have his head office in one province and carry on business in another.[2] The best evidence, perhaps, of the importance and variety of the banker's functions appears in the elaborate legal rules dealing with the production of his books and the statement of his accounts, and filling many paragraphs in the *Digest* and *Code*.[3]

It is from these same sources, as well as from the Theodosian Code and from a great array of inscriptions, that we derive our knowledge of the Roman workingman's clubs and trade-unions. The inscriptions have not only supplied many details not found in the books, but they show to what an extent free labor flourished all over the Empire, even in competition with slavery. Under the Republic trade associations grew strong and had much influence in politics, for Cicero constantly mentions them, and was advised by his friends to bid for their vote. Indeed, their power became so great, during the anarchical times of the later Republic, that they were twice suppressed by the Senate and again by Julius Cæsar and Augustus. These last prohibitions did not, however, apply to associations that

[1] Cunningham, *Essay on Western Civilization*, p. 183.
[2] *Dig.* 2, 13, 4, 5. See Guillard, *Les Banquiers à Rome*; Deloume, *Les Manieurs d'argent à Rome*.
[3] *Dig.* 2, 13; *Cod.* 2, 1.

were old established or legally authorized. While we have not full particulars as to the senatorial and imperial legislation, it seems clear that besides Religious Clubs, Burial Societies, and Poor Men's Benefit Clubs, the law recognized, or at least tolerated, a great many workingmen's societies closely corresponding to the trade-unions of the present day.[1] Each trade seems to have had its own association. There were separate unions of carpenters, masons and stone-cutters, of fishermen, sailors, boatmen and mule-drivers, of carriage-builders, carpet-weavers and cutlers, of butchers, poultry-dealers, cooks, laundrymen and tailors; in short, we find no less than one hundred different trades in which associations appear to have existed.[2] There is no evidence of federation having been attempted among similar unions in different cities, but the large unions had local subdivisions. Thus the building carpenters of Rome had about twelve hundred members divided into sixty *decuriae*. The unions were organized on the principle of industrial democracy, and could enact any by-laws not conflicting with the general law. Their revenues were considerable, as evidenced by the way in which they spent them and by the fact that their meeting-halls (*scholae*) were substantial, even sumptuous, buildings. We cannot tell whether they ever aimed at limitation of apprentices, trade monopoly, or the enforcement of a minimum wage or of the "union shop," but there can be no doubt that their object was then, as it is now, to strengthen the position of the workingman and to enable him in various ways to improve his condition. Thus a lawsuit was carried on by the Roman laundrymen against the imperial fisc for the possession of a valuable plot of land, and the laundrymen were victorious after eighteen years of litigation.[3] As to strikes we have few particulars, and though we know they occurred, we cannot tell what were their effects. If they tended to disturb the peace, they were no doubt sternly suppressed by the Roman magistrates, as happened in one strike of which an account has been preserved.[4] But of all the vicissitudes of the Roman unions the most fully described and the most interesting is that socialistic system of state control depicted in the Theodosian Code, under which they passed in the fourth century. Under this system every artisan was compelled to enlist in the union of his trade, and each union became virtually a branch of the state's administrative machinery. For facts such as these the economic historian is indebted partly to the archæologist, but chiefly to the civil lawyer.

[1] The most complete discussion of this subject is that of Waltzing, *Etude hist. sur les Corporations Professionnelles*, Brussels, 1895.
[2] See list in Waltzing, vol. II, p. 148.
[3] *Ibid.* vol. I, p. 188.
[4] *Ibid.* vol. I, p. 192.

IV

To any student of the early history of Roman law, its connection with the history of Religion must be evident. We cannot tell exactly what form of punishment is referred to in the words *sacer esto* of the laws of the Kings and the Twelve Tables, but it must have been of a religious character, and there can be little doubt that the earliest sanction of contract was the displeasure of the gods. *Sponsio, sacramentum, iusiurandum* all had a religious origin, and the last of these remained to the very end religious in form. Even as late as the time of Justinian, when there were so many different ways in which contracts could be made, it is astonishing to see how much the oath was still resorted to as a mode of making a binding promise. Its original sanction doubtless was that the perjurer became *exsecratus*, cut off from the sacred rites of his family, but by Justinian's time the breach of an oath gave to the promisee an ordinary civil right of action.[1]

Again it is well known that, just as the ethical ideals of the Stoic philosophy affected the development of Roman law in the first, second and third centuries, so the religious ideals of Christianity exerted an even greater influence upon it from the fourth century to the sixth. This meant on the whole an improvement of the law in the direction of increased humanity and equality, except in the law of persons. There we find, in the disabilities attached to Jews, pagans, and heretics, differences based on religion making their appearance for the first time in Roman law. On the other hand, by bettering the condition of slaves and of women, by mitigating the *patria potestas*, and by the gradual abolition of the rights of agnates which culminated in the famous one hundred and eighteenth Novel of Justinian, the Christian leaven worked with salutary effect.[2]

Still more interesting, however, and more far-reaching was the converse process, the modification wrought by the legal atmosphere of Rome in the religious rites and doctrines of Christianity. So far as I know, this subject has never yet received adequate treatment, which is the more strange because Sir H. Maine long ago drew attention to it in a famous passage.[3] But the field is an immense one, and a few points only can here be mentioned. As to ritual, it is scarcely necessary to recall the fact that the solemn questions put to the man and woman in the marriage service and to the sponsors in the baptismal service, which still survive in the English Book of Common Prayer, were framed in the contractual form peculiar to Roman law. Richard Hooker, to whom the use for such a purpose of this Roman form seemed quite natural and proper, explains to the English reader how

[1] *Dig.* 13, 5, 25, 1.

[2] Troplong, *Influence du Christianisme sur le Droit Civil.* Lea, *Studies in Church History.* Osborn, *Classical Heritage of the Middle Ages.*

[3] *Ancient Law* (11th ed.), p. 357.

the Roman verbal contract was made, and quaintly adds: "Is it toyish that the Church exacteth an irrevocable promise of obedience by way of a solemn stipulation?"[1]

In the development of Christian doctrine there appears a tendency similar to that which Matthew Arnold described in *Literature and Dogma*. Legal phrases and conceptions derived from Roman law, which were at first used metaphorically or by way of illustration, came by degrees to be used literally as dogmatic definitions. Thus the relation of God to man, from being viewed as a moral one based upon love and duty, came to be regarded in a strictly legal light.

It has often been pointed out that St. Paul, as befitted a Roman citizen, was fond of using metaphors drawn from the law of the Empire. As has been well said by a distinguished clergyman, "he construed Christ in mixed terms of Hebrew sacrifice and Roman law."[2] St. Paul uses the ceremony of adoption, the Roman conception of heirship, the Roman form of guardianship, the sealing of the prætorian will, in order to illustrate various aspects of God's dealings with man.[3] But he uses them as illustrations, not as clear-cut definitions. So also, when he speaks of the death of Christ as a ransoming or redemption of man from sin, he does so by way of showing in an eloquent figure of speech how man has been affected by Christ's influence and example, rather than as defining a legal function performed by Christ.

When we pass to the works of Augustine, Ambrose, Origen, Athanasius, and other Fathers of the Church, we find the idea of Christ's work for man beginning to harden into that of the performance by Him of a legal service.[4] This was regarded as one of two legal transactions; either (1) as *satisfactio*, paying off the debt which man, an insolvent debtor, was himself unable to pay, and canceling the chirograph made by man; or (2) as *redemptio*, buying man back from the slavery in which Satan held him. But for theological purposes these two different aspects of the Atonement were treated as one and the same.

Pelagius and St. Augustine in the fifth century had a famous controversy over the effects of Christ's sacrifice, and so had Abelard and St. Bernard seven centuries later. In both cases the orthodox doctrine prevailed, that men could not become partakers of the Kingdom of Heaven unless their debts were wiped out through the satisfaction offered by Christ.[5]

St. Anselm of Canterbury, who had studied the civil law, and

[1] *Ecclesiastical Polity*, 5th book, sect. 64.
[2] McConnell, *Christ*, p. 54.
[3] Ball, *St. Paul and the Roman Law*.
[4] See extracts from the Fathers in *Bibliotheca Sacra*, vol. 36, p. 441.
[5] Voss, *Hist. Pelagian*, lib. 7, 1, thesis 3, and his *Responsio ad Judicium Ravenspergii*, cap. 3.

who lived just at the time of the great legal revival, seems to have been the first great Christian writer who elaborated the dogma that, as part of a scheme ordained from all eternity whereby God's justice should be satisfied and man's sin pardoned, God had become man in order to satisfy by His death a debt which the human race had heaped up, but could not pay. This strictly legal view was elaborated by the Thomists and Scotists in their disputes over *satisfactio superabundans* and *satisfactio gratuita*, and at the Reformation it was appropriated by the Reformers, who quite logically insisted upon it as a strong argument against the Papal system of penance and indulgences. Luther said that "by none other sacrifice or offering could God's fierce anger be appeased but by the precious blood of the Son of God"; and the poet of Puritanism has stated its doctrine in the gloomy lines:

> "Die he or justice must; unless for him
> Some other able, and as willing, pay
> The rigid satisfaction; death for death."

To what legal extremes this theory of atonement was carried at the Reformation is nowhere better shown than in the Defence of the Catholic Faith which Grotius wrote against Socinus.[1] Socinus had argued that where there was satisfaction of a debt there could be no need for any remission of that debt by God. Grotius answered him with citations from the *Digest*. He admitted that Socinus's contention would have been true if the legal service performed by Christ had been *acceptilatio*, *novatio*, or *delegatio*. But inasmuch as that service was in law quite a different transaction, and since the obligation incurred by man had not been canceled by Christ, but merely suspended through the working of *satisfactio*, Grotius argued that there was still room for the exercise of God's mercy in completely doing away with man's liability.[2]

It would be interesting to trace the whole history of this famous dogma, perhaps the strongest though by no means the only instance of legal influence on Christian religious thought; but in so short a sketch details must needs be omitted. The doctrine figured conspicuously in the teaching of Wesley, whose constant cry was: "Plead thou singly the blood of the Covenant, the ransom paid for thy proud stubborn soul," and through him it has played a great part in modern Protestantism. While it may be true, in the recent words of an English clergyman, that "theories of atonement are now either rejected or in process of being rejected,"[3] St. Anselm's legal doctrine still numbers many adherents.

[1] Socinus, *De Christo Servatore*, pars 3, cap. 1–6.
[2] Grotius, *Def. Fidei Cath.* cap. 6.
[3] Canon Henson, *Value of the Bible*, p. 279.

V

The history of Roman law is clearly connected with that of Literature, yet it can scarcely be shown that either has had much share in actually moulding the other. It can of course be maintained that the high development of Roman law and the fascination which it exercised on the best Roman intellect during the zenith of the Empire are mainly accountable for the differences between Greek and Roman literature, particularly for the poverty of the latter in philosophical writings. But except for that general effect the relation between law and literature at Rome is on the whole one of interpenetration, rather than of direct action and reaction. We can interpret each by the help of the other, but we cannot, at least in secular literature, establish any filiation between them. The technical phrases used by Horace or Juvenal bring out the legal element in literature, just as the polished style of Labeo or Gaius illustrates the literary element in law. But Horace cannot be connected with the controversies of the Sabinian and Proculian Schools, nor can we trace Juvenal's remark, *Res fisci est, ubicunque natat*,[1] to the inspiration of any particular jurist. No literature can be fundamentally understood without understanding the laws of the country that produced it, and this is particularly true of Rome, because law was her chief intellectual pursuit. On the other hand, the writings of the Roman jurisconsults, being couched in a style of extraordinary elegance and precision, are not only entitled to claim that literary taste is requisite for their appreciation; they represent in themselves a distinct branch of literature, a branch in which they have probably never been excelled.

The fact that law and literature can be interwoven is proved in Aristophanes and the Attic orators, as well as in many more modern instances, but no better examples can be found than in Latin literature. Several of Cicero's orations would be hopelessly puzzling if it were not for our knowledge of Roman law, just as the *Fasti* of Ovid would be full of difficulty unless we knew something about Roman religion. The same may be said of many passages in the plays of Terence and particularly of Plautus. Volumes have been written, especially in recent years, to explain how the law serves to elucidate those passages, and how they serve even to better purpose in elucidating the law. For just as the *Fasti* throw more light on Roman religion and topography than we receive from the historians of Ovid's age, so it is certain that we derive more knowledge of the early history of Roman law from information incidentally conveyed by literary men like Livy, Cicero, and Plautus than we do from facts intentionally imparted by scholars like Varro. For any acquaintance with early law Latin literature is indeed indispensable. And in later times, as

[1] *Sat.* 4, 55.

we noted above, Roman law becomes in turn absolutely essential for the proper understanding of religious literature.

VI

The intimate connection between the history of Roman law and that of Language seems scarcely to need pointing out, when our every-day speech is constantly and openly confessing its many obligations to that law. This very word obligation, borrowed from a "vocable of art" devised by the Roman jurists, is a word the history of which is impossible to trace till we go back and discover how they formed it and in what sense they used it. The same is true of nouns such as person, privilege, prejudice, occupation, exception, sequestration, confusion; of adjectives such as peremptory, mandatory, specific; and of verbs such as adopt, redeem, emancipate. All these are derived from technical terms familiar to the Roman jurists, yet their meaning has undergone such change in the course of ages that their legal origin is quite forgotten. A long list of similar words in our modern vocabularies could be made by simply working through an English, French, or even German dictionary. Some terms, again, such as usufruct, plebiscite, manumission, servitude, have passed from Roman into modern terminology without material change in their original sense; while other nouns, such as solidarity, have been taken, not from legal nouns, but from technical adjectives.

Not only must we seek in Roman law the parents of many of our words; there are some also of which the genealogy can be traced through many gradations of meaning even in the hands of Roman lawyers. For instance, their word *humanitas* signifies in different passages: (1) human nature, (2) sensibility, (3) kindness, (4) compassion; while *pietas* denotes in different legal texts: (1) sense of duty based on family ties, (2) conscientiousness shown by an employee, (3) the feeling expected from a Christian toward his church and its members. Nor does this enumeration by any means exhaust all the shades of meaning given by Roman lawyers to those two words.[1]

It should also be remembered that among the most important contributions to the history of Roman law are the curious details and the citations from ancient texts which have been preserved by Roman students of the science of language, such as Varro and Festus. They alone have saved from oblivion, as one may see fully set forth in the pages of Bruns, much antiquarian lore invaluable to the legal historian. Even the best Roman lawyers were also dabblers in philology, as we can see from the derivations of legal terms which Gaius and others have handed down to us. Though their efforts in this line savor of the famous derivation of Erie Canal from Eridanus, they are valuable as showing their authors' point of view. Nor does

[1] Krüger, *Z. der Sav. Stift. für RG*, vol. 19, 1888, p. 6.

this comprehend all the services of the philologist to legal history. For in comparative jurisprudence it has been shown, as for instance by the present Regius Professor of Civil Law in the University of Cambridge, that by tracing the etymology and analyzing the use of words like *fas*, *ius*, *lex*, and their Greek and Teutonic equivalents, much historic light can be thrown on the earliest conceptions of law as unconsciously defined in language.[1]

Thus by investigating etymologies, by tracing obsolete or obscure shades of meaning, and by the preservation of rare antiquities, linguistic scholars both ancient and modern have greatly helped the legal historian. The civil lawyer has on his part supplied to the student of language an immense mass of material of well-authenticated date and authorship, filled with terms from which have directly descended many of the words now used not only by the Latin but also by the Teutonic race.

VII

There are two main facts connecting the history of Law and that of Art in any given place. The first is that times of great legal activity or legal reform almost always coincide with periods of flourishing art. This may doubtless be accounted for by the fact that law and art are expressions of the same human intellect, and when that intellect is roused to energetic action in one form, it usually is so in others also. The second point is that architecture, sculpture, and painting must inevitably treat in some measure of subjects connected with the law of their country. Any one of those arts may convey legal allusions, just as it may suggest religious or political ideas, and in order to understand those allusions we have to know something about law, politics, or religion, as the case may be. Both points can be well illustrated from the history of Roman law.

In the first place, there can be no doubt that the most glorious epoch in that history, beginning with the jurists of the Augustan age and ending with those under the Antonines, Septimius Severus, and Caracalla, was also the golden age of Roman architecture and sculpture. For the art of the Augustan period it is enough to cite that wonderful *Ara Pacis*, whose fragments are scattered among several European museums, and the remains of which are now being unearthed under a Roman palace. And the second of those two great centuries was, so far as we are able to judge, the period of culminating splendor both in law and in art. Trajan and Hadrian, so great as legislators, have each left us one of the magnificent monuments of antiquity, a sculptured column in the one case, and a colossal tomb in the other. The memory of Marcus Aurelius, in whose day Roman society was so intensely civilized and modern, has been preserved

[1] Clark, *Practical Jurisprudence*, part 1, chaps. 1–6.

for us not only by the *Code* and *Digest*, but by famous Roman works of art both in bronze and in marble. To Septimius Severus we owe a splendid arch, to Caracalla the remains of still more splendid public baths; and it should be remembered that Julia Domna, the wife of the former and the mother of the latter emperor, brought together in her brilliant *salon*, not only the best philosophers, orators, scholars, poets, and artists that the world could then produce, but also the greatest of Roman jurists, Paulus, Ulpian, and Papinian.[1] By the time of Constantine we note a decline in artistic no less than in legal achievement. Again, when legal activity revives under Justinian the codifier and reformer, we have his superb and well-preserved architecture at Ravenna and Constantinople to set beside his even more enduring legal monuments. After him both art and law fall into a kind of lethargy, until again, and surely not by accident, the legal revival during the twelfth, thirteenth, and fourteenth centuries takes place in the same wonderful period which produced the early Italian artists. And once again a second renewal of interest in the study of Roman law, with which the great Cujas is identified, coincides with the revival of classic art in the Renaissance. There seems, in short, to have been a sort of tidal movement in the European mind, by which the history of art and that of law have equally been affected.

When we come to consider the legal allusions in art, for the understanding of which a knowledge of legal history is requisite, we stand on ground less easy to survey. For here we find nothing but isolated details, each of which has to be separately examined. A knowledge of legal history is sometimes useful in clearing up a question of ancient architecture. Thus the basilica found in Domitian's palace on the Palatine could not be appreciated unless we knew the Emperor's legal position as final court of appeal. Similarly, the churches built in the catacombs could not be understood unless we knew that the law forbade burial inside Rome, while it also protected all resting-places of the dead, and that it thus quite unintentionally pointed out the catacombs as excellent sanctuaries for a persecuted sect. Sometimes the history of Roman law may help us to understand sculpture. In Bologna, Padua, and even Siena we find wonderful semi-regal tombs erected to the memory of thirteenth or fourteenth century jurists. They stand in a public place covered with splendid canopies of stone, or they rest against the wall of a church, each decorated with a marble bas-relief which represents the great scholar sitting, book in hand, giving a lecture to his class of pupils. These beautiful monuments would mean but little to us, unless we knew from legal history how great was the fame in his own day of an Accursius or a Bartolommeo di Saliceto, and how the revival of civil law in Italy

[1] Réville, *La Religion à Rome sous les Sévères*, p. 201.

produced a long succession of such teachers, whose labors brought not only renown but wealth to the cities where they taught.

For understanding the work of painters some knowledge of this sort is even more needful. In the great Florentine chapter-house of Santa Maria Novella, which Ruskin has so elaborately described, there is a fresco depicting the seven divine sciences personified by as many female figures. Beneath the figure which represents the science of Civil Law sits the Emperor Justinian. She carries a sword and a globe, while he holds in his hands the *Institutes*. No one could appreciate the point of this personification unless he knew the position of Roman law in medieval Italy and the reverence with which Justinian was regarded, a reverence to which Dante in his *Paradiso* has borne witness. Again in the Sala della Segnatura in the Vatican, we find, among frescoes representing religious scenes, such as that of Moses giving the Tables of the Law, a great fresco by Pierino del Vaga which sets forth the delivery of the *Code* by Justinian to Tribonian. This is matched by another fresco which depicts Pope Gregory handing down the *Decretals*. To understand these subjects we must know something of the causes which led men to regard the civil and canon laws as the very foundation-stones of justice.

In other cases we find inscriptions to interpret. For instance, in the Sala della Segnatura Raphael has written *Rerum divinarum notitia* over the head of his Theology, and *Ius suum unicuique tribuens* over the head of his Justice, thus quoting directly from Ulpian and the *Institutes*. Similarly Ambrogio Lorenzetti, in his great fresco of the Sienese Council Chamber, places two angels labeled *Distributiva* and *Commutativa* above his female figure personifying Justice, and thus refers to St. Thomas Aquinas and Aristotle. Here we need Roman Law to explain the one inscription and Philosophy to explain the other, just as for the great mosaic of the Lateran Triclinium the history of Politics can alone furnish an adequate commentary.[1]

After this brief and most imperfect survey of the relations existing between Roman law and other sciences we may perhaps ask ourselves why it is that we find its remains and trace its influence in so many different quarters. To this question a reply is furnished by two historical facts.

First, the vitality of the Roman Empire was such that it lasted actually for a thousand years in the East, and theoretically much longer still in the West of Europe. Secondly, the law created by it, being a purely intellectual product, was even more lasting than the Empire itself; so that the barbarians, who destroyed the outward and visible signs of the Roman power, were themselves subjugated

[1] Bryce, *Holy Roman Empire* (8th ed.) p. 117.

by its inward and spiritual grace. Inasmuch, then, as Roman law was the most durable material in that vast imperial edifice the ruins of which so long overshadowed Europe, we can well understand that its fragments should be incorporated into almost all the lesser structures which have since been reared by the mind of Western peoples.

PROBLEMS OF ROMAN LEGAL HISTORY

BY MUNROE SMITH

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To attempt to recapitulate, within the limits of a spoken address, the unsolved problems of Roman legal history would be an absurdity. Such an undertaking would make it necessary for us to follow the development of the Roman law from the Twelve Tables to Justinian's law-books in order to indicate what portions of this millennial movement are still obscure. Even then the survey would be incomplete, since the history of the Roman law neither begins with the Twelve Tables nor ends with Justinian. It begins at that unknown date when Rome began and it has not ended yet. To select a narrower period and to single out what seem the more important problems would be more feasible; but the mere enumeration of difficulties would be neither interesting nor profitable.

The best excuse for a paper on the problems of any science is the writer's conviction or hope that he may be able to make some contribution toward their solution, if it be only by suggesting unworked lines of investigation which appear to him to promise useful results. It is my belief that for the most important period of Roman legal history — the period in which the ancient Roman law, public and private, reached its highest development, and which extended, roughly speaking, from the middle of the third century B. C. to the middle of the third century A. D. — there is a promising method of investigation or line of approach which as yet has been scantly utilized. The method which I advocate is that of comparison; and the comparison which I suggest is with Anglo-American legal development from the thirteenth century to the present day.

The older lines of investigation seem to be worked out. It is not likely that new material of importance will be discovered; we can hardly hope for a second find like the fourth book of the *Institutes* of Gaius; and all direct methods of interpreting the existing sources have been so diligently and ably exploited by European jurists, from Cujacius to Mommsen and Lenel, that every student of the Roman

law now has the instinctive feeling that a new interpretation is probably a very doubtful interpretation.

The usefulness and the limitations of the comparative method of studying legal history perhaps need more accurate definition than they have yet received. The assumption on which comparative jurisprudence is based is the essential identity of human nature everywhere. The inference is that social developments among all peoples would be identical if all had reached the same stage of development and were living under identical conditions. In this last qualification we have the first and most important limitation upon the comparative method. Conditions are never identical: they are at most broadly similar. Accordingly, the working hypothesis on which comparative jurisprudence proceeds is that peoples in the same general stage of social development are likely to approach social problems from similar starting-points and to attempt their solution on similar lines. The inference is that a fully known development in one nation may help us to interpret a partly known development in another nation. Proceeding with proper caution, we may even fill gaps in the historical record of one system by examining the intermediate links in a similar chain of development in another system. Such reconstructions, it is needless to say, will seldom be indisputable, but they will be more nearly correct than the products of the historical imagination.

Another limitation upon the comparative method, as an agency in historical reconstruction, is found in the fact that different legal systems do not develop in absolute isolation. The history of human law, as of all civilization, is largely a history of borrowings. I think, however, that this limitation is fully appreciated by students, and that there is at the present time little danger that it will be disregarded. The tendency of historical jurisprudence now, as in the past, is rather to exaggerate than to overlook the borrowed elements in each legal development. Because the Romans had certain institutions which were not primitive and which resembled Greek institutions, and because similar institutions existed at a still earlier date in Egypt and in Babylon, there has been an over-readiness among students to assume, without sufficient evidence, a series of imitations and an unbroken chain of derivation. Reasoning of this sort has attributed to Roman sources not a few English institutions which on closer investigation appear to be independent products, as truly English as they were truly Roman, or, to put it more accurately, neither English nor Roman but human. Their similarity is due to the similar working of the legal mind under analogous conditions.

It must be granted, however, that the comparative method is to be used with caution; that the movements compared should be

intrinsically comparable; and that allowance should be made for possible borrowings.

Given these limitations, it is not surprising that comparative study of legal institutions for purely scientific purposes has thus far been confined for the most part to the field of early law. There has been greater safety here, because the conditions of social existence are more uniform among barbarous peoples than among civilized nations, and because such peoples are less likely to know and to imitate foreign customs.

In this part of the field the application of the comparative method to the problems of Roman legal history has already yielded valuable results. The comparative study of early law in general has thrown light into many corners which were hopelessly dark to the later Romans themselves. "Not for all things established by our ancestors," wrote Julian, "can a reason be assigned"; but for quite a number of the things which the later Romans found inexplicable we are now able to assign reasons that are not merely plausible but convincing.

To the later and more important stages of Roman legal development — to the public law of the later Republic, and to the civil and praetorian law of the later Republic and of the early Empire — the comparative method has not been applied, or has been applied sporadically only and with little result. The reason is very simple. The jurists of Continental Europe have rightly felt that the other and more modern legal systems with which they are acquainted are not available for comparison. As regards public law, they have been living under absolute monarchies or under constitutional monarchies in which the crown is still a real force. They have had no personal and vital acquaintance with republican government conducted on a large scale and maintained for a long period — no such experience as Englishmen have had in substance for two centuries and Americans in form and in substance both for more than a century. As far as popular participation in national government has been introduced in the larger European states, it has been borrowed from England and adapted to Continental conditions. As regards private law, the Continental European jurists have had personal and vital acquaintance with only two systems: the remnants of the old Germanic law — a law arrested in its development in the tenth century — and the law of the later Roman Empire, which at the close of the Middle Ages they borrowed *en bloc*, and which they have since been assimilating and modifying. The one Germanic system which has had an unimpeded and continuous development, the one modern system which has an independent history comparable in its duration with that of the Roman law, is to them almost a closed book. On the other hand, the English, who have the data for comparison, have done little serious work in the field of Roman legal

history, and the best of that work has been done in the field of Roman public law. In the field of private law they have relied on French and German writers, not only for the historic facts, but for the interpretation of those facts.

But, it will be asked, are the modern Anglo-American and the ancient Roman legal systems fairly comparable quantities? Are there such broad analogies in their general development as to warrant the hope that a minute study of the one will be serviceable in interpreting the other? I grant the differences; they are sufficiently evident; but I insist on fundamental although less obvious analogies. The constitution of the Roman Republic was substantially an unwritten law, as is the English Constitution. It consisted of precedents, that is, of adjustments reached in the political field at the close of political conflicts. Of these adjustments only a part was incorporated by the Romans or has been incorporated by the English in declaratory statutes. In establishing their Republic, the Romans retained their ancient kingship for ceremonial purposes, housing the *rex sacrorum* in the old royal palace and parading him as figurehead of the state church. The real powers of the kingship in church and in state were intrusted to officials; and these in the Latin Republic were elected by political parties. The English have retained a less shadowy kingship, but they have transferred the really important powers of the crown to a small body of officials who represent the dominant party in an elective assembly. The Romans put their ex-magistrates into their Senate, the English keep their ex-ministers in their Privy Council. The American Constitution is indeed a written one, but there has grown up beside it a body of authoritative precedents. The American executive bears more resemblance on the whole than does the English premier to a Roman consul. He is freer in his action than the consul in that he has no colleague to control him. A shrewd Frenchman, M. Raoul Frary, has remarked that England is a republic with an hereditary president, while the United States is a monarchy with an elective king. The common element and the fundamental element in all three constitutions is the exercise of governmental power by men selected by party organizations.

Great Britain, like Rome, has built up a world-empire; and like Rome it has combined domestic liberty with external power by limiting governmental authority at home and permitting it to act freely abroad. The reserve powers of the British crown furnish the constitutional historian with a modern instance of the *imperium militiae* of the Roman consul. The viceroy or governor is the English equivalent of the proconsul or propraetor; and colonial affairs are controlled by the British Privy Council as provincial affairs were controlled by the Roman Senate. As a matter of policy, Great Britain

has conceded, as did Rome in the republican and early imperial periods, a large measure of local self-government to its subjects beyond the seas. In both empires we find the war power and the control of diplomatic relations in the hands of the home government, the ordinary administration decentralized and left in the hands of local authorities.

The United States, after rounding out its continental domain, has recently acquired possessions beyond the seas. In dealing with them it is somewhat embarrassed by the absence from its written constitution of indefinite and general governmental power — power corresponding to the Roman *imperium militiae* or to the residuary authority of the British crown. This difficulty was felt a century ago, when the process of continental expansion was beginning; and each successive exigency has been met, and is being met, by the development in our unwritten constitution of the war powers of the American president. In the administration of its earlier continental acquisitions, the United States, following the example of Rome and of Great Britain, encouraged the development of local self-government; and it is following the same policy in its new insular dependencies.

In the expansion of Great Britain and of the United States, as in the expansion of Rome, the fact of central interest is the upbuilding of empire by a free people; and in the English and American empires — if the insular dependencies of the United States are to be dignified with so high-sounding a title as empire — the fundamental problem is the same which confronted the statesmen of Republican Rome, namely, the reconciliation of empire with liberty.

One of the devices of Roman public law for limiting governmental power at home was an elaborate system of checks and balances. The power of every official was limited in its practical exercise by the independent and possibly opposing powers of other officials. In the hierarchy of superior and inferior officials which constitutes the administrative system of the modern European state, no such checks as these exist; but they are familiar to the English public lawyer, and they have been greatly multiplied in American constitutional law. In the place of administrative control of the inferior by the superior, which is so highly developed in modern European law, the English and American law, like the Roman, has developed control through the ordinary courts. When, for example, a Roman aedile destroyed merchandise which obstructed the public highway, the legitimacy of his action was tested at Rome, not by appeal to the consul, but by an action to recover damages for illegal destruction of property, just as a similar exercise of police power would be tested in Great Britain or in the United States.

It may finally be noted that contemporary political conditions in

the United States help us rightly to understand the dramatic final century of the Roman Republic. When we cease to view that period through the eyes of European scholars, we shall recognize that its salient characteristic was the appearance on a magnificent scale of those political personages whom we call "bosses"; and we shall discover that the Latin word for boss was *princeps*. *Princeps*, Mommsen tells us, was a word commonly used in the later Republic to designate the most prominent citizens. The definition might be more exact. The citizens who were designated as *principes* — men like Sulla and Pompey and Crassus and Julius Cæsar — were prominent before all things in political management. They were the men who controlled the machinery of the senatorial and popular parties. The members of the first triumvirate — a body which an American politician would instinctively designate as "The Big Three" — were described by Cicero as *principes*. In our federal system of government, we have not developed any boss whose authority reaches beyond the limits of a single state; we have no national bosses; and if we had them, our constitutional and administrative arrangements are such that even a national boss could not readily put himself at the head of a large mercenary army in New Mexico or in Alaska, and upset the government by marching on Washington. These variations, however, do not affect the substantial identity in political science of our boss and the Roman *princeps;* and this identification enables us to understand that the official theory of Augustus and of his immediate successors — the theory that the free commonwealth was still in existence — did not seem to the Roman public to be a fiction. Augustus was not an emperor in our sense of the word; he was simply the boss raised to his highest terms; and that consuls and praetors and all the other officers of government were elected on his nomination, and that the Senate was filled with his henchmen — these were the familiar accompaniments of boss rule. From this point of view, we can fully understand Pliny's remark, that the very men who were most averse to recognizing anything like monarchy (*dominatio*) had no objection to the authority of a boss (*princeps*).

The development of the Roman boss into an emperor was made possible by his control of the army. For this development English constitutional history affords no parallel, unless in the protectorate of Cromwell; and here the evolution into monarchy remained incomplete. To find any really parallel processes in modern constitutional history we must turn to the Latin peoples.

In the field of private law, however, the movement in the early Empire was substantially a continuation of that in the late Republic; and during both periods the processes by which the Roman law, civil and praetorian, was developed, were fundamentally the same as

those by which Anglo-American law and equity have been developed. This fundamental similarity is not generally appreciated, because the mode in which the Roman law was developed is not commonly understood. We read in every legal history that the Roman civil law was cast into the form of a code, the famous Twelve Tables, about four and a half centuries B. C., and that the further development of this law was accomplished chiefly by interpretation of the Twelve Tables. We read also that the interpretation which was accepted as authoritative, and by which the law was developed, did not proceed from judges, but until the third century B. C. from a college of priests, and after that time from a small number of private citizens who were known as *jurisprudentes*. The English common law, on the other hand, as we all know, has been built up by judicial decisions: it is simply the permanent practice of the tribunals. At first glance it does not seem as if these two processes were analogous. On closer inspection, however, the differences are seen to be superficial. The law of the Twelve Tables was not a code in the modern sense of the word; it was simply a collection of the principal rules of early Roman customary law. From the point of view of comparative jurisprudence, it belongs to the same class as the continental German *leges* and the Anglo-Saxon dooms of the early Middle Ages (fifth to the ninth centuries). It has recently been asserted by a prominent Italian historian that the Twelve Tables were probably a private compilation, and that the story of their construction by the decemvirs and of their submission to and acceptance by the Roman popular assembly deserves no more credit than the legend of the slaying of Virginia which forms a part of the narrative of the decemviral activity. Still more recently this thesis has been defended with great ingenuity by a distinguished French legal historian. I myself have not been convinced by their arguments; I still cling to the belief that the essential part of the Roman story is probably correct, and that the Twelve Tables were probably accepted by a Roman assembly as the German *leges* were accepted a thousand years later by German tribal assemblies. For my present purpose, however, the answer to this historical question is not material. In the later Republic the compilation known as the Twelve Tables was officially regarded as a *lex;* it was revered as a charter of popular rights and as the cradle of the civil law; but it was interpreted with as much freedom as if it had been merely a private statement of the rules governing the administration of justice in a far-away and semi-barbarous age. It really exercised little more influence on the administration of justice during the last century of the Roman Republic than the laws of Alfred exercised upon the administration of justice in the reign of Elizabeth. The compilation had been surrounded for generations by a growing mass of interpretation, which had so modified and sup-

plemented its primitive and scanty provisions that for all practical purposes the interpretation and not the *lex* was the law.

The first seeming distinction between the development of Roman civil and English common law thus disappears. Each represents a development from rude and simple custom into a highly refined and complex jurisprudence by means of interpretation. There remains, however, the apparent difference between the interpreters. What was there in common between the jurists of republican Rome and the king's judges in England? To answer this question we must consider the position and activity of the Roman jurists. They obviously were not judges in the ordinary sense, for they did not hear pleadings or try cases. At the first glance, they rather resembled our lawyers, for they gave advice to all who chose to consult them. They helped their clients to avoid trouble by drafting contracts, wills, and other instruments; and when trouble had arisen, they gave opinions (*responsa*) on the legal points at issue. So far at least their activities were those of practicing lawyers. But they differed from all other practicing lawyers of whom we know anything in two important respects. In the first place, they did not take charge of cases in litigation, either as attorneys or as barristers. They were willing neither to prepare cases for trial nor to argue cases before the courts. Such matters were attended to by professional orators like Cicero. Cicero was a lawyer in our sense, but at Rome he was never regarded as a jurist. In the second place, while the Roman jurists were always ready to furnish opinions, they neither expected nor accepted pecuniary rewards. The rewards at which they aimed were the gratitude of those whom they had served, the confidence of the public, and eventual election to political office. As practicing lawyers they were, accordingly, servants of the public in general rather than servants of their special clients.

To appreciate how far the Roman jurists discharged the same function as the English judges, we must note how controversies were actually decided under each of these two great systems of law. Controversies were actually decided at Rome, not by the magistrate who heard the pleadings, but by *iudices*, who were private citizens. Similarly, controversies have actually been decided for the last seven centuries in the Anglo-American administration of justice by juries, also composed of private citizens. Neither the Roman *iudices* nor the English jurymen were supposed to know the law. As English jurymen are instructed by the judges, so the Roman *iudices* were instructed by the jurists. The instruction might be directly obtained by a *iudex* if he chose to ask for it, but it usually came to him in the form of an opinion obtained by one of the parties. It was of course possible that both parties might have obtained opinions from different jurists, and it was conceivable that the opinions might be conflicting.

Conflicts, however, rarely occurred, because the republican jurists in giving their opinions were not in the position of paid advocates trying to make out a case for their clients; they were in the position of unpaid and impartial servants of the public. Under these circumstances differences of opinion were no more numerous than those which have always existed in the English and American courts. The republican *iudices* were not bound to follow the opinion of any jurist; they had the powers of English criminal jurors, they were judges of law and of fact alike. In both systems, however, it is noteworthy that the decisions actually rendered by *iudices* or by jurymen were never cited as precedents. What was cited at Rome was the response of a jurist, and what is cited in Anglo-American law is the opinion of the court. Hobbes perceived the fundamental analogy between the Roman jurists and the English judges when he declared, in his *Leviathan*, that the king's judges were not properly judges but jurisconsults.

The Roman law was thus developed, as the English law has been developed, not by the decision of controversies, as is sometimes said, but by the opinions expressed in connection with such decisions by specially trained and expert servants of the public. The English judge combines some of the powers of a Roman praetor with the authority of a Roman jurist — he is half praetor and half *iurisprudens;* but his influence upon the development of the law has not been praetorian, but jurisprudential.

It should be noted, further, that single *responsa* did not make law at Rome any more than instructions from judges to juries have made law in England or in America. What were regarded at Rome as authoritative precedents were the so-called "received opinions," that is, the opinions which were approved and followed by the juristic class. In England and in America, similarly, it is not the preliminary rulings or the final instructions of the trial judges, but the opinions of the bench to which cases are carried on appeal, that constitute precedents; and it is doubtful whether a decision of even the highest court in a case of first impression really makes law. It seems the better opinion that it is the acceptance of such a decision by professional opinion generally and its reaffirmation by the court in later cases which make it really authoritative.

The real difference between the Roman jurists and the English judges is that the Roman jurists, like the law-speakers of our German ancestors, were designated by natural selection. It is interesting to note that, before the conversion of the Germans to Christianity, their law-speakers were priests, just as the older Roman jurists were *pontifices*. In the Frankish period the law-speakers began to be artificially selected; the Frankish counts appointed advisers (*rachineburgi*); and these advisers developed into the *scabini* of the

Middle Ages. In other words, the German law-speaker is the ancestor of the European judge. At Rome, also, in the imperial period, artificial selection was substituted for natural selection. Certain jurists received from the Emperor "the right of responding," and the *iudices* were not bound to consider any opinions except those proceeding from these certified or patented jurists. This change brought the Roman jurists a step nearer to the Anglo-American judges. The evolution was completed, as I shall presently indicate, in the second century after Christ; but before describing the processes by which law was made in the Empire, we must consider and compare Roman praetorian law and English equity, in order to see how far the processes by which these systems were developed present real analogies.

Roman praetorian law and English equity are in so far analogous as they both represent what the Romans called *ius honorarium*, official law. In both cases the new law was produced by governmental agencies which were not exclusively nor indeed primarily judicial — agencies which set themselves above the previously existing law, and which not merely supplemented it but overrode it.

There is a superficial difference between the way in which the Roman praetors made law and the way in which the English chancellors made it. The praetors used the quasi-legislative form of ordinance or "edict"; the English chancellors developed new rules in judicial fashion by decisions rendered in single cases. When, however, we examine the edicts of the Roman praetors and consider how their provisions were applied, the difference almost disappears. The praetor, like the chancellor, was originally an administrative rather than a judicial officer; but his duties were in the main judicial: it was his chief business to arrange for the termination of private controversies. The edict which each praetor set up at the beginning of his year of office was not a series of commands but a programme. In it he provided certain remedies and indicated under what circumstances each remedy would be given. This programme was carried out, as single cases were presented, by means of formulas sent to the *iudices*. The formula was a command: if the *iudex* found certain allegations of the plaintiff to be true, and if he did not find certain other allegations of the defendant to be true, he was commanded to render a certain decision. The English chancellor decided cases as he saw fit. The Roman praetor caused cases to be decided as he saw fit. A new rule working itself out in chancery was first disclosed in the decision of the special case which suggested it, and any modification of the new rule was subsequently revealed in the same way. Any new rules which the Roman praetor intended to enforce, and any modifications which he intended to make in the rules laid down by his predecessors, were announced in advance, at the beginning of his year of office. Fundamentally these two methods of creating law are identical, and they

both resemble law-finding rather than law-making. The rules laid down were suggested in both systems by actual controversies, and they were amended in both systems as new controversies afforded new points of view. In form the Roman process was more considerate of private interests. The complaint of the English common lawyer, that equity was administered according to the length of the chancellor's foot, would have lost much of its force if the length of the foot had been indicated in advance.

The similarities of the two movements are more striking than the formal differences between them. At the outset neither the Roman praetor nor the English chancellor was held to be capable of making or finding law or of creating new rights. Each, however, could issue orders, and each could enforce these orders *in personam* by fine and imprisonment. Each was therefore able to impose new sanctions and to create new remedies; and eventually, in both systems, it was recognized that where there was a sanction there must be a legal rule and where there was a remedy there must be a legal right. Strictly speaking, the rules laid down in the edicts of the praetors and those expressed or implied in English decisions in equity became law by force of custom. It was by the iteration of the same rule in successive praetorian edicts (*edicta tralatitia*) that the Roman official law was built up. It was by the observance of precedents and the development of a settled practice that English equity came to be a regular part of the English law.

There was, however, one important historical difference between the two movements. The development of the Roman praetorian law not only made Roman law more equitable, but it introduced into that law the commercial customs of the Mediterranean — customs which apparently date back to the Babylonian Empire. A similar reception of general commercial law took place in England, but here it came later, after the development of equity, and chiefly through the action of the common law courts. In both cases, however, as Goldschmidt has pointed out, commercial law was not brought in as a distinct and separate system, as in the modern continental European states, but the general law was commercialized. The English law was commercialized by decisions of the common law courts, largely rendered in the eighteenth century, just as the Roman law had been commercialized by praetorian edicts in the second and first centuries B. C.

In the Roman imperial period the processes of law-making became more obviously similar to the processes by which law has been developed in modern times. Under the Empire law-finding gradually became altogether governmental. The first step in this direction was taken, as we have seen, when the jurists became representatives and agents of the Emperors. The next step was the establishment of new courts, civil and criminal, in which imperial officials heard the plead-

ings and the evidence and rendered the decisions (*iudicia extraordinaria*). The last step was to transform the surviving courts of the older republican type — the praetorian courts — into purely governmental courts. This change was accomplished by substituting for independent citizen *iudices* subaltern officers of the court itself, mere referees. This last change brought the Roman courts into substantially the same form as the European continental courts of the present day. To describe the change in English phraseology, not only did the magistrates become judges, but jury trial was abolished.

In proportion as law-finding was governmentalized, it was also centralized. From the judgments of the independent *iudices* appeals had never been permitted. From the decision of the imperial judges appeals ran to the Emperor or to such higher judges as he might designate. In the imperial council, or rather in that branch of the council which came to be known as the auditory, the Roman Empire obtained a supreme court of appellate jurisdiction.

In connection with these changes, all the more important offices of a judicial character came to be filled by the patented jurists. During the republican period and under the first emperors, the jurists might occasionally act as *iudices* and they frequently became magistrates; but their control over law-finding, although practically complete, was for the most part indirect. The great Roman jurists of the second and third centuries of the Christian era were judges in the modern sense; and it was by their direct activity, that is, by their decisions on points of law, and particularly by the decisions rendered in the imperial auditory, that the law of the Empire was chiefly developed. Their decisions were reported and digested in their own writings. To describe the juristic literature of the early Empire as "legal theory" is to misrepresent its character and its authority. It was "jurisprudence" in the modern French sense, *i. e.* settled juridical practice. If the eminent European scholars who have written the standard histories of the Roman law had been familiar with the development of Anglo-American law, they would readily have recognized the true character of the legal literature of the Roman Empire.

In the early Empire, as in the Republic, direct legislation played only a subordinate part in the development of the law. After the middle of the third century, when the production of juristic literature ceased, it is commonly assumed that all legal change was made by direct imperial legislation. As late as the beginning of the fourth century, however, the law was still developing largely by decisions. The imperial rescripts which date from the latter part of the third and the early part of the fourth centuries, and which constitute so important a part of Justinian's *Codex*, are case-law, that is, they are decisions reached by the imperial supreme court; and for the most part these rescripts are fully up to the level of the previous century. It was

not until the fourth century that the Emperors began to declare that rescripts issued in single cases were not to be regarded as establishing general rules. Then, indeed, legislation became almost the sole factor of legal development. This change, however, was not the result of a progressive evolution; it was a symptom of degeneration. Judicial decisions ceased to be regarded because jurisprudence had sunk to so low an ebb that the decisions were not worth regarding. The older case-law, however, stood in undiminished honor and authority. Much of it was saved in Justinian's *Digest*, some of it in his *Codex*. Only in these casuistic portions of Justinian's compilation were there seeds of life; and from the close of the eleventh to the close of the nineteenth century these seeds have yielded rich and renewed harvests.

The subject assigned me, with which I have been taking certain liberties, is not European legal history nor legal history in general, nor comparative jurisprudence, but Roman legal history; and for this reason I have thus far confined myself to indicating how largely the study of English legal history may be expected to help us to a deeper and truer comprehension of Roman legal history. I trust, in closing, that I may be permitted to take a further liberty with my theme, and to indicate that a careful study of Roman legal history will be of great service to the Englishman or American who desires to comprehend his own legal history. I lay little stress on the point that we may thus recognize what has been borrowed; I desire chiefly to insist upon the point that we may thus better appreciate the true character of English legal history as an independent development. Furnished with a knowledge of the Roman law and of its development, the English investigator will more accurately gauge by comparison the excellencies and the defects of the English law. He may not find, as is commonly claimed, that the Roman law is more scientific, — a claim which I take to mean that its broader generalizations are more correct, — but he will certainly find that the Roman law is more artistic. The sense of relation, of proportion, of harmony, which the Greeks possessed and which they utilized in shaping matter into forms of beauty, the Romans possessed also, but the material in which they wrought was the whole social life of man. There was profound truth in the saying of the Roman jurist that law was the "*Ars boni et aequi.*"

The comparative student will find also that while the English law has developed in certain directions further than the Roman, the Roman law in certain other respects had attained, at the close of the republican period, a development which seems to go beyond ours. This is true, for instance, in the whole field of commercial dealings. The great regard paid in all commercial transactions to good faith and the instincts of an honest tradesman, and in particular the abandonment by the Romans, two thousand years ago, of the primi-

tive and dishonest doctrine of *caveat emptor*, — a doctrine which the English law still unaccountably retains, — point out lines along which, I believe, our own law is bound to develop.

Best of all, the comparative student will learn to distinguish between that which is peculiar and therefore accidental in both systems and that which is common to both and therefore presumably universal. It has long been the hope of some of the greatest modern jurists, both in English-speaking countries and in Europe, that by strictly inductive study it may be possible to discover a real instead of an imaginary natural law. The corresponding hope of the legal historian, that it will in time be possible to formulate the great laws that govern legal development, is not, I believe, an idle dream; and I am sure that the minute comparative study of Roman and Anglo-American legal developments will carry us further toward such a goal than any other possible comparison.

SECTION B — HISTORY OF COMMON LAW

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(*Hall* 11, *September* 21, 10 *a. m.*)

CHAIRMAN: PROFESSOR JOHN D. LAWSON, University of Missouri.
SPEAKERS: HONORABLE SIMEON E. BALDWIN, Judge of the Supreme Court of Errors, New Haven, Conn.
PROFESSOR JOHN H. WIGMORE, Northwestern University.
SECRETARY: PROFESSOR C. H. HUBERICH, University of Texas.

THE HISTORY OF THE COMMON LAW

BY SIMEON EBEN BALDWIN

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IN mapping out the field of science for the purposes of this Congress, it has been thought that it could best be presented for our consideration in seven great divisions. There is that of Rule, which deals with universals; that of History, which records the story of mankind in recent time; that of Physics, which looks to our material environment; that of the Mind, which makes little of environment; that of Utility, which makes the most of it; that of Social Regulation, which applies law to society; and that of Culture, which creates character.

Nominative science can tell us of the philosophy of law. Physical science can show how law succeeded savagery, and to what extent it has been moulded by climatic and geographical conditions. Mental science discloses the subject of law and is our guide in methods of judicial procedure. Utilitarian and regulative science apply it to its proper objects in a proper way. Cultural science rests upon it and presupposes it.

In considering the history of law, it has been deemed convenient to confine the discussions of this department of the Congress to the consideration of the two kinds of law which have had the greatest

influence on the modern world, and a comparison of the various legal systems which have been their fruit.

Whatever preceded the Roman law may, for the purposes of tracing the development of legal institutions, not only in Europe and America, but now to a large extent in Asia, be regarded as merged in it. The unwritten law took on written form as a finality so far as government could accomplish it, under Justinian. But soon there came, or began to be more manifest what had long been growing up under the institutions of a decaying empire, or beyond their reach, the upgrowth of other unwritten rules which at last, in every European community, large or small, took shape as its common law.

Why was it that the Roman law was never put in formal order until Rome had ceased to be the mistress of the world?

Why was it that later ages achieved more with the ruder instruments of what seemed disorder and was diversity?

Is it not that law, when distinguished from morals and considered as a social rule, is personal or local rather than universal in its essential attributes?

How much of it is there of which it can truly be said with Cicero[1] that it is not one law at Athens, another at Rome, but one, unchanging, and eternal?

The history of religion shows us that the early ministers of religion have sought to give to law a sacred character, and make it the word of God. In one sense we may still affirm this. In another we cannot.

Its substratum everywhere must be the three rules, *honeste vivere; alterum non laedere*; *suum cuique tribuere.*[2] These bear the stamp of divinity. They are questioned by no one, who thinks clearly and fairly; no one at least since the Christian era came in.

It has been well said, in describing the origin of the English common law, "that the laborer shall receive his hire; that contracts shall be obligatory, and the rights of property in all its relations respected; that personal security and reputation shall be protected from both malice and negligence; that the family relations shall not be disturbed, nor equal justice refused to any man — are not propositions that depend for their support upon the customs of our ancestors any more than upon the precepts of the *Pandects*. They would be first principles in our law, whatever custom to the contrary might ever have prevailed anywhere. Indeed, no custom upon any subject, however well established, will be tolerated by a court of justice if found to contravene moral justice, or natural right, or those principles of the common law that are thence derived." [3]

[1] *De Republica*, II, 22, 33. [2] *Digest*, I, 1, *De Justitia, et Jure*, 10.
[3] E. J. Phelps, *Orations and Essays*, 103. *Cf.* Bradford Corporation *v.* Ferrard, Law Reports, 2 Chancery Div. 655, 661.

To courts under a government less free than England these words might not apply. Custom and authority may, at many points, stand up against a *Naturrecht* and maintain their ground. But these points everywhere become fewer, as civilization advances. The "general conscience of civilized men," to quote from an American scholar who has done much from the scientific side to put our jurisprudence on a solid footing, "or, in other words, positive morality, ought to be, and, in fact, ultimately and in the long run is, the paramount predominating political force in the civilized world, and . . . it is this that makes civilization possible." [1]

The applications of these principles of moral justice and natural right by legal rules must, however, vary from land to land and age to age. One family, one tribe, one village community, one folk-mote, one medieval city, will follow one line of action, and another another.

Here, as a tribe grows into a people and some sort of judicial establishment is set up, a certain mode of procedure is adopted, leading to a certain doctrine of substantive law; and there the choice of another mode for the same class of controversies may end in establishing a different right.

The causes of human action indicated by history, when fully ascertained, are seldom those that would have been reasoned out by philosophers to whom that history was unknown.

Law is the voice of order: human law of order in organized society. But who utters the voice? How often does it speak? How are its words recorded? Do they order the doings of to-day or of to-morrow? Are they, once uttered, beyond recall? And if to be recalled, what power shall do it?

The history of science calls for an answer to these questions, — calls for it, and gives it.

The people of a race, or of a land, are in the foundation of things its only lawgiver. At first they speak by silence. The relations with each other which they find it convenient to maintain, defined only by the usage of daily life; slowly though surely changing with their growth or their decay; — these in their settled order each generation in each land, without caring to inquire whether they come from a political sovereign, receives as its unchallenged birthright, its royal inheritance: these make it and keep it a nation.

I speak of substantive law. The people make the rules for their own behavior. They are content that courts, when courts arise, should regulate theirs.

This law is for long ages but a matter of oral tradition. The priests may declare it. The priests may come to have their sacred books in which it may be or may be said to be enrolled. But they are not for the people to look into. It is not until education passes from the

[1] George H. Smith, *A Critical History of Modern English Jurisprudence*, 75.

priests, everywhere its first possessors, to become the possession of the community, that law can or need take written form.

As the Northern tribes that destroyed the Roman Empire, when they learned letters from those whom they conquered, set up their codes by the side of the Theodosian and the Justinian, so with every people a time comes when unwritten law takes written form. It is an evil time if it comes too quickly. It is an evil change if it is pressed too far.

The force of law is the reverence of the people. Man is born to reverence for his elders and for the elder time. He wastes his patrimony if he does not cherish with this sentiment the laws and institutions which have come to him by descent. He may some day build better. But nothing will be better which does not rest, in part, and in no small part, on the old foundations.

A common law is obeyed by the mass of the people instinctively and unquestioningly. They may challenge the right of a monarch or a legislative assembly to impose new rules upon them. They may endeavor to elude their force, or even resist them. But as Maine has observed, "the actual constraint which is required to secure conformity with usage is inconceivably small." [1] We follow usage in law, as we do in dress, without asking for any other reason than the practice of our neighbors.

This may be called mere prejudice, but popular prejudices are often the best ally of justice. England has grown great and lasted long because she trusts them so much. As Burke has put it in speaking for his countrymen: "We cherish them because they are prejudices; and the longer they have lasted, and the more generally they have prevailed, the more we cherish them. We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations and of ages." [2]

Japan has wisely bowed to this universal rule in modeling her constitutional government. It had been the basis of the empire that it should be governed by a line of emperors unbroken for ages eternal. They made no such pretense, as the Romans did, that the people were the ultimate source of authority, but had committed it all to the emperor by some royal law.[3] They received their constitution in 1889 as his free though irrevocable gift. Its essential character was, by his will, expressed once for all to be immutable, but minor modifications he could suggest from time to time to the Imperial Diet.[4]

[1] *Early History of Institutions*, 392.
[2] *Reflections on the Revolution in France*, Burke's Works, Bohn's ed. II, 359.
[3] *Dig.* I, 4, *De Constitutionibus Principium*, 1.
[4] *Constitution of Japan*, arts. I, IV, V, VI, LXXIII.

Customary law, even though it may come to be embodied in a code, has no quality of permanence until it has become the law of the land. That of the Jews has shown that if once attached to a land, it may survive a separation from it. But the customs and codes of the dark ages, binding only a part of the persons occupying the soil, were in their nature temporary and evanescent, fit only for the migratory hordes to which they appertained.

Each particular land must have its own peculiar law, made by and for its own peculiar people, and when it takes on written shape it must reflect the genius of this people, or it will quickly perish from the earth. In the words of one of the leaders of the American Bar, "the work of declaring or making law, whether committed to the hands of a judge, a legislature, or a codifier, is substantially the same. It is the task of applying the national standard or ideal of justice to human affairs." [1]

The denial of this was one of the great defects of Bentham's philosophy of legislation. He belonged to a race which had little faith in large generalizations as to what is for the good of organized society, and was content to settle each question as it might arise, crossing no bridges until it came to them. He did not share in the prevailing convictions of his own countrymen. Of those of Americans he knew still less. Yet he was insensible to the folly of his formal offer to the President of the United States to draw up a complete code of laws for the United States and also for the several states, including, as he wrote, "a succedaneum to the mass of foreign law, the yoke of which in the wordless as well as boundless and shapeless shape of common, *alias* unwritten law, remains still about your necks." [2]

A country may or may not find it expedient to ordain or to ask for a written constitution of political government. Social conditions may render it inexpedient. Long usage may supply its place.

But so far as concerns government in the daily affairs of private life and the administration of justice between man and man in their relations to each other, a written code will everywhere, in time, supplant the common law on certain, and these the greatest, subjects, as the first evidence to which to appeal in any controversy as to the rule of conduct which the state may have prescribed. This will not be because the code has replaced the common law. It will be because it has expressed the common law. Its proper work is to arrange rather than to change, and where there have been local differences, to choose between them and take the ground approved by the majority of the people. To do more than this, in any matter of substance, is to do too much. It is to disregard the inevitable rule that

[1] James C. Carter, *The Proposed Codification of our Common Law*, 40.
[2] Bentham, *Papers relative to Codification*, etc., 1.

sustained progress can come only by the slow, lingering, hesitating course of evolution.

"*Non tum denique incipit lex esse, quum scripta est, sed tum quum orta est.*" These words of Cicero,[1] used with reference to what of law is in its nature divine, are not less applicable to a national common law. To codify it is not to create it. To codify it is not or ought not to be to give up the aid to an understanding of its meaning furnished by judicial decisions of former times. California was the first American state to adopt a civil code, but her courts, in working under it, have always resorted freely to the preceding law out of which it grew. It was indeed urged by her foremost jurist, a supporter of codification, that they should go farther and assume as a kind of legal fiction that the preceding law covered every case that could arise, and that the code was designed to make no changes in it which were not manifest on the face of the new provisions.[2]

The Romans based their philosophy of law on a false foundation. They assumed a golden age in the far past when all nations were governed by the same great rules. Their *jus gentium* was of all myths the most misleading.

To view the normal place of law as the common and identical possession of every people, and hope for world-uniformity when a golden age of pristine innocence shall return, is to misconceive the essential nature of things. All progress is away from uniformity. If history has taught us anything, it is, to use the terms of Spencer, that there is "an ever increasing heterogeneity in the governmental appliances of all nations"; [1] that all "organic progress consists in a change from the homogeneous to the heterogeneous"; and that this "is so, because each change is followed by many changes." [3]

Not only, the world has learned, "is all progress from the homogeneous to the heterogeneous; but at the same time it is from the indefinite to the definite." [4]

So will the uncollected and unclassified wisdom of the people, which we see gradually take on the shape of their common law, at another stage of their history pass from the unwritten into the written, and finally crystallize into formal codes. But they will be national codes and nothing more. No two peoples can see things from the same viewpoint. Nor can any two generations of the same people see things from the same viewpoint.

Constitutions, if drawn as constitutions should be, may be, in theory at least, immutable. That of the United States, so difficult has been made the process of amendment, and so happily brief is it in

[1] *De Legibus*, II, 4, 10.
[2] James C. Carter, *The Provinces of the Written and the Unwritten Law*, 24.
[3] *Illustrations of Universal Progress*, Appleton's ed., 3, 15, 57.
[4] *Ibid.* 396.

terms, has never been changed and will never be changed except by reason of some real emergency.

But codes of private law must draw the elements of growth or of decay from the life of the people whom they serve. It has been said that the difference between the Roman and the modern idea of the basis and fundamental nature of law is that between fixity and movement, — between the law as necessary, and the law as always subject to revision.[1] No doubt the Romans did think it a social necessity that there should be some form of institutional authority, the expressed will of which was the final rule of social action. But it is difficult to maintain that they accorded any special fixity to its expression. As it came from the people it could be changed by the people. Long usage if extending over "*plurimos annos*" added new laws, "*velut tacita civium conventio.*" [2] It gave, and it took away. Even legislative statutes were frankly declared to be subject to tacit abrogation by sinking into desuetude.[3]

No attempt to transmute the common law of a people into code form can be worthily made which fails to discriminate between what of its provisions are in their nature permanent and general, and what of them were the product of temporary and local circumstances. Those of the latter kind may have been preserved in force through centuries, and nevertheless they may be essentially unjust and of the nature of class legislation in opposition to the public welfare.

Customary law, therefore, cannot be reduced to a written form which shall have the elements of perpetuity unless those who undertake the task have the true interests of the people at heart. They must be able so far to dissociate themselves from the influence of present conditions as to look at things from a far standpoint. They must be uncontrolled by motives of a selfish character, personal to themselves. I do not speak of those who put results in words or are the ones whose names may authenticate charters or codes. *Magna Charta* was not the work of the king who gave it. It would not have formed the enduring corner-stone of English and American liberty had the barons who wrung it from him exacted only what benefited themselves.

Had France, before the days of 1789, made full codes for those of her provinces which were subject to unwritten law, she would have perpetuated so much that ought never to have existed, and shown so plainly to all the burdens unfairly thrown upon a part, that the Revolution would have come all too soon.

The term *commune jus* was used at the close of the fourth century of our era as if it were a familiar one to denote, apparently, rules and

[1] A. H. Lloyd, in *Am. Hist. Review*, IX, 775.
[2] *Dig.* I, 3, *De Legibus, Senatusque Consultis et Longa Consuetudine*, 35.
[3] *Ibid.* 32, § 1. *Aulus Gellius, Noctes Atticae*, XII, 13.

laws which were common to all the inhabitants of a country, irrespective of their particular nationality.[1] Subsequently the canonists employed it, and also *lex communis*, to denote those rules of the church universal which were generally in force, as distinguished from special privileges given by popes, or local rules and customs of a particular church or ecclesiastical establishment.[2]

During the Dark Ages the term *lex communis* is found in the Frankish codes. The first instance of which I am aware dates back to about the beginning of the ninth century.

Charlemagne had made laws, as king of both Franks and Lombards, most of which bound his subjects of all nationalities.[3] Pepin, not long afterwards, in his statutes as King of Italy, after providing on certain subjects different rules for Romans and Lombards, declared that "*De ceteris vero causis communi lege vivant, quam Dominus Karolus, excellentissimus Rex Francorum atque Langobardorum in edictum adjunxit.*"[4] The term was used in the same sense by one of the older English writers, who referring to the unification of the laws of England by Edward the Confessor, in the eleventh century, to replace the different laws of the Angles, Danes, and Mercians, says: "*Ex tribus his legibus S. Edwardus tertius* (*ante conquestum*) *unam legem communam edidit.*"[5]

While, therefore, the thought which is expressed in the modern mind by "common law" is that of universality, and territoriality, as the law of the land,[6] originally it was rather that of the general law of the church universal, or of a personal law common to several peoples subject to the same sovereign.

What force attaches to such a common law of the land?

Rome, in the later stages of her institutional development, made this depend largely on whether it had acquired some kind of governmental sanction. When, said Ulpian, one relies on a custom of a city or a province, the first thing to be done is to ask if it has ever been confirmed by some judgment in a contested lawsuit.[7] Romans loved form and formal expression. A judgment gave this, although not as fully as an act of legislation.

France, from an early period, required legislative approval. Her common law, it may be said, as respects the French provinces subject to the *droit non écrit*, differed radically from that of England in two points. It was not fully recognized by the courts until it had been

[1] Cod. Theodos., II, 1, *De Jurisdictione et ubi quis Conveniri Debeat*, 10; XIV, V, *de Haereticis*, 23.

[2] Pollock & Maitland, *History of the Law of the English People*, I, 115, 176.

[3] Some were confined to the Lombards. See Heinneccius, *Corpus Juris Germanici*, 1153, 1166.

[4] *Ibid.* 1188.

[5] Spellman, Glossary, *Lex.*

[6] Hale, *History of the Common Law*, chap. 3, p. 55.

[7] *Dig.* I. 3, *De Legibus, Senatusque Consultis et Longa Consuetudine*, 34.

reduced to writing and officially promulgated by the government, and it was not subject to extension by analogy through mere judicial construction.[1]

If there was a point as to which custom had provided no rule, but the Roman law did, the judges, from the time when the *Corpus Juris Civilis* first appeared, could resort to it, but only because it was a high form of written reason.[2]

After the adoption of the *Code Napoléon* they were given a freer hand. In framing the decrees by which it was to be promulgated, the Council of State considered this question at length. It was urged that no civil code could provide for every conjunction of circumstances and that the ancient local laws should remain in force as to matters not otherwise expressly regulated.

No, replied M. Bigot-Préameneu. This would perpetuate the confusion which we seek to end. We should have judgments of the Court of Cassation affirming one rule, in a case coming from a province formerly under the *droit écrit*, and a contrary rule in a case coming from a province formerly under the *droit non écrit*. The Roman law will always and everywhere have the authority of written reason, but its use will be all the greater if we can resort to its equitable maxims without being hampered by every subtlety and error which may have attached itself to them.

These views prevailed and the Council agreed that while an infraction of the previous law should not necessarily constitute a ground of legal error, judges might, if they thought proper, take the principles of that law as a guide in the determination of causes.[3]

The name common law (*droit commun*) in France, it may be observed, has a somewhat different signification from that which attaches to it in most countries. It is used as importing the law, whatever may be its character, common to a whole people or a land, as distinguished from a law of partial application, and also the law recognized by all peoples in all lands — the *jus gentium* of the Romans.[4]

Austin, to maintain his theory that law is a mere act of force proceeding from the sovereignty of the state, expressive of its will, and to be obeyed because of its superior power, has found it necessary to assert that custom, however ancient, never becomes law until the judges, acting for the government, in the decision of some case, have declared it to be such.[5]

As has been seen, there is some Roman authority for this position,

[1] Merlin, *Répertoire de Jurisprudence, Autorités*, II, *Coutume*, II.
[2] Merlin, *Répertoire de Jurisprudence, Autorités*, II, *Coutume*, III; Montesquieu, *De l'esprit des Lois*, liv. XXVIII, chap. xii.
[3] Merlin, *Répertoire de Jurisprudence, Raison écrite*.
[4] Merlin, *Répertoire de Jurisprudence, Droit;* Ortolan, *Diplomatie de la Mer*, 4th ed., 455, 456.
[5] *Lectures on Jurisprudence*, I, 104; II, 537, 558, 581.

though quite as much against it. It is, however, not easy to understand how Austin's general views have been received with so much favor by English jurists. He refuses to see that the soul of law is not force, but right. He roundly asserts that "in truth, law is itself the standard of justice," though admitting that it is a standard subject to correction by some higher standard, if there be such, set up by the sovereign elsewhere.[1]

Law in human society is made for men. It is made for beings having — considered as a mass — certain general notions of moral justice. These notions are the unwritten constitutions, no positive law violating which can long endure.

The same thing is true of custom and of judicial decisions supporting custom. If they are contrary to moral justice, the day will come when they will be abrogated, if neither by legislation nor by disuse, then by the courts themselves.

That customs may have received judicial sanction is but uncertain evidence that they deserved it. Bentham, not wholly without cause, said of the English common law that it based men's dearest interests "on some random decision, or string of frequently contradictory decisions, pronounced in this or that barbarous age, almost always without any intelligible reason, under the impulse of some private and sinister interest, perceptible or not perceptible, without thought or possibility of thought, of any such circumstances or exigencies, as those of the people, by whom the country here in question is inhabited at the present time: pronounced by men, who, if disposition and inclination depend in any degree on private interest, were as far from being willing, as from being, in respect of intelligence, able, to render their decisions conformable to the interests, even of the people by whose disputes those decisions were called for, and whose situation alone it was possible that, in the framing of those decisions, they should have in view: — even of the people of those several past ages, — not to speak of those of the present age, or of ages yet to come." [2]

If antiquated morality and antiquated law do not disappear together, one does not long survive the other. As Sir Frederick Pollock has remarked, "Legal justice aims at realizing moral justice within its range, and its strength largely consists in the general feeling that this is so. Were the legal formulation of right permanently estranged from the moral judgment of good citizens, the state would be divided against itself." [3]

No people can adhere to a common law which is not in the habit of bowing to judicial precedent. And on the other hand, no people can adhere to a code without putting it above the reach of interpretation by precedent. Interpreted it often must be, but the courts

[1] *Lectures on Jurisprudence*, I, 223.
[2] *Papers on Codification*, 14, 31.
[3] *First Book of Jurisprudence*, 31.

must be free in each case as it arises to interpret it each for itself. A distinguished lawyer of wide experience in a line of practice requiring considerable familiarity with the laws of France, at a public hearing in 1881, before a legislative committee in New York, said of the *Code Napoléon*, that he would undertake, if the meaning of any important sections of it were questioned, to furnish decisions on both sides, and one as authoritative as another, since the rulings of the Court of Cassation bound no inferior tribunal.

As Sir Henry Maine has pointed out, with his accustomed precision of statement, one of the material differences between the legal systems of England and America and those of other countries is that the English common law is content with no conclusions from imaginary facts.[1] It demands to know what has been adjudged to be the law on established facts. Anything short of this is an illustration, not a rule.

A legislative fiat rests on an imaginary state of things. A judicial precedent rests on an actual state of things.

The actual state of things in any controversy between man and man may so far differ from any state of things previously known that no rule of law can be found which exactly applies to it. In such case, the courts make use of the old rules as far as they can. This gives a twist, perhaps, to the old rules, which thereafter are bent in a new direction. To quote from the author cited, "Almost everybody can observe that, when new circumstances arise, we use our old ideas to bring them home to us; it is only afterwards, and sometimes long afterwards, that our ideas are found to have changed. An English court of justice is in great part an engine for working out this process. New combinations of circumstances are constantly arising, but in the first instance they are exclusively interpreted according to old legal ideas. A little later lawyers admit that the old ideas are not quite what they were before the new circumstances arose." [2]

This change, such as it is, will naturally be in the direction of conformity to the national standards of justice and civil policy existing at the time of the decision. The judge cannot shut his eyes to the his tory and spirit of the day and time in which and for which he speaks.

The history of the Anglo-American common law is very far from being a mere history of judicial precedent. It is rather a history of public custom. No collection of precedents could ever be answerable to the wants of a civilized community. The only collection to satisfy them must be one of the principles of justice and incidents of history from which those precedents were derived. It was justly said, in 1836, in its report to the legislature of Massachusetts by the very able commission which had been appointed to consider the subject of codification, that "of the innumerable questions, which arise in

[1] *Early History of Institutions*, 47.
[2] *Ibid.* 229.
[3] See Holmes, *The Common Law*, 35.

any one age, and admit of forensic controversy and doubt, probably not one in a hundred, perhaps it would be more correct to say not one in a thousand, ever comes before a court of justice to be there finally settled by adjudication."

If a disputed question of private right is submitted to counsel to be determined by the rules of common law (and I mean the common law supplemented, as it always is and must be in a civilized people, by the rules of equity), he considers first whether there is any one of them which obviously and directly applies to it. If not, he asks if there be not one which by analogy governs. If there be none such, he looks to the fundamental principles of natural justice, and there he cannot fail, or if he does it is because he fails in his selection. The principles are established and they are decisive. *Ubi jus, ibi remedium.*

The common law of a people will develop on two lines, that of their relation to the state, and that of their relation to each other.

The former naturally comes first. In its infancy a nation gropes after large things only. It thinks, when it begins to think, in poetry. It is ready to idealize whatever is the representative of sovereign power. Then, if it finds his hand too heavy, it seeks for charters and guaranties. These, for a people that is strong and feels its power, are the conditions of its support. They proceed from what already has begun to be a custom, and new customs are built upon their foundations. It is simply adherence to law and to the man who personifies it.

The history of civil liberty is the first and best part of the history of common law. But it is a short chapter.

Liberty soon asks for itself recognition in some written document to which man can appeal in time of public stress and conflict.

On the other hand, no written document, under any conditions of human society yet developed, can adequately provide for every future conflict of private interests.

There is a field for the professed law-makers, be they king or representative assembly, and there is a field for the unprofessed law-makers, the people.

Legislative power in early days seems to have been mainly exerted to serve the purpose of authentication. It was not looked to for innovation, but for preservation.[1] The legislative hall was a recording office.

And it must still be regarded as the great function of a legislature to regulate the dealings of the state with individuals and with other states. When it passes beyond this and seeks to regulate details of conduct between man and man, it enters upon dangerous ground. It is making law for those who can generally make it better, have generally made it better, for themselves.

Legislation as to succession to the estates of the dead is justified

[1] See Maine, *Early History of Institutions*, 26.

because they belong of right to nobody. When the hand that gathered or preserved fell lifeless, it was for the state to send what no longer was in the rightful grasp of any where it would.

Judicial procedure also is a matter proper for legislation. It is the means by which the power of the state is exerted to preserve the order of the state and the rights of its inhabitants.

But these rights, unless they rest on something better than statutes, are on no assured foundation. Rights are inviolate. Statutes may be passed to-day and repealed to-morrow.

Rights also, founded on a common law, contain a principle of growth. They may increase, though, so far as they are founded on the principle of equality of opportunity, they can never be permanently diminished.

To define them in statutory words is to circumscribe them. It tends to prolong inequalities of condition. The freer, therefore, a people may be, the longer they will be apt to cling to unwritten law.

There is, however, one tendency of modern times which occasionally exerts great force in an opposite direction. It is that towards the aggregation of nationalities, to the strength that comes from union. In the course of such great movements the maintenance and development of a national common law may be checked by codification proceeding from reasons of political policy. The *Gesetzbuch* of Frederick the Great was an early example of this. The German Imperial Civil Code of 1900 is in large part due to the same cause. It helps to unify a new empire. Those who framed it, however, did not underrate the inevitable reluctance of the particular states to yield more than could justly be claimed as necessary. The "law of introduction" is so full of exceptions in their favor that more almost seems to be reserved than is taken away.[1]

None of the early codes or collections of common law are codes in the modern sense.

When the first beginnings are made toward stating it in an authoritative shape, it is put forward as a mere bundle of propositions, reached apparently by no scientific process, and arranged certainly in no scientific way. It will be full as to some points; meagre or silent as to the rest. So far as it has arrangement or order, it may be that of bare chronology. To learn what it is, we must look to the history of the people, and trace its halting and devious steps from this level to that, now ascending and now perhaps sinking to a point from which it can never rise. These things once known, we can begin to construct a philosophy to state their ultimate results. As in everything else, to quote the words of Froude, "we must have the real thing, before we can have a science of a thing." [2]

[1] See Sec. 1, Art. 3, and Sec. 3.
[2] Thomas Carlyle, *Life in London*, II, 126.

And yet what is more scientific than the theory and practice of the law of evolution? In that this has been followed, the history of the common law shows that its advance has been scientific. It has been thoroughly unscientific in this, that it has never been systematically arranged and set in order. Governments and peoples have not stopped to analyze their common law. They have practiced it rather than studied it.

Science has, strictly speaking, nothing to do with productive application. It inquires for the sake of knowledge. Science teaches man to know: art teaches him to act. Art leans on science; but science is independent of art.

Our business in this Congress of Arts and Science is, I take it, to look at a lawyer's art so far only as it gathers strength and form from science, and finds its guide in jurisprudence.

But while jurisprudence is independent of the art of legal practice, there are other arts of which she is not independent, and from which she derives nourishment and support.

History is a tale that is told. It is an art to tell it well. Science may supply the master-keys to unlock its secret places, but what she discovers is fruitless unless so stated and illustrated as to catch the ear and strike the mind.

Law precedes letters, but the history of literature as well as of language must be far advanced before that of law can be really begun.

One does not rise from the study of the first book of the *Pandects*, which takes up the origin of Roman law, with the feeling that any full and comprehensive treatment of the subject has been given. The main facts are there, but they are cold and lifeless. This is not simply because the *Pandects* are an array of *disjecta membra*, into which no one human being has breathed the breath of life — of his life. It is because the Roman jurists had not learned the art of historical composition as applied to explaining the development of legal conceptions. There was no Grotius, no Savigny, no Maine, to detect the minor forces of jurisprudence and marshal them in line.

The literary style and spirit of men like these is hardly less important than their knowledge of the subjects of which they treat. It is the artist only who can portray with that sense of proportion and symmetry so essential to one who would set any system of things before other men in a way to be felt and remembered.

The historian of the common law of any land must be artist and lawyer, both.

A lawyer only can differentiate the legal from the social currents in the life of a nation. A scholarly antiquary — a Bishop Stubbs — may be more competent to explore the sources, and set out materials for the work. But the task of discriminating and rearranging can only be done satisfactorily by one who is by long practice familiar with

the law of his own land in his own day. He knows best how to choose between authorities and reason backwards from new to old. As Lord Bacon has put it: "*Exempla, quae ad leges spectant non placet ab historicis peti, sed ab actis publicis et traditionibus diligentioribus. Versatur enim infelicitas quaedam inter historicos vel optimos, ut legibus et actis judicialibus non satis immorentur.*" [1]

The history of the common law is continuously connected, by the necessities of judicial procedure and through the interpretation of statutes and contracts, with that of the physical sciences.

Rights are worthless unless there are courts to protect them. Courts proceed by rule. One rule of common use is that judges take notice, without proof, of whatever so belongs to universal knowledge that it may fairly be assumed to be familiar to all. This doctrine, styled by English law "judicial notice," puts at the service of courts of common law, without proof, all that human science has established beyond a question. It does not, indeed, ask how — through what scientific processes — results have been attained. It accepts them on faith. But it uses them in a scientific way, for scientific purposes.

The Supreme Court of the United States was called upon some years ago to determine whether a patent for a certain invention could be sustained. It was for a method of preserving meat in a receptacle inclosed by a refrigerating chamber. Was this a new device? If not, the patent had been erroneously granted. The judges, without proof, decided that it was simply an application to a new purpose of the principle of the common ice-cream freezer.[2]

A statute contains a term of art or is based on a scientific theory. It is then for the courts to interpret and apply these on the principles of the common law.

A few years since an American legislature enacted that a certain public officer should inspect all peach-orchards, and if he found any trees affected by the disease known as the "yellows" should destroy them. Was this or was it not to give to one man arbitrary authority over another's property? It was, unless the science of agriculture had established the danger of infection from trees seized by that disease, and the history of agricultural science thus became the handmaid of the law.[3]

So contract rights expand with the expansion of physical science.

An owner of a colliery in England in the seventeenth century acquired a grant of a right of way to haul his coal across the land of another to the highway. Two centuries later came the invention of the steam railway. He built one, and the courts supported his right

[1] *De Augmentis Scientiarum*, VIII, III, *Aphorismus*, XXIX.
[2] Brown *v.* Piper, 91 U. S. Reports, 37.
[3] State *v.* Main, 69 Connecticut Reports, 123, 136.

to use the privilege, granted so long before, in this new way. General words were to be interpreted in view of what, for the time being, in any age, under then existing scientific conditions and possibilities, was reasonably necessary to give them full effect.[1]

It is probable that in following the course of national common law too much stress has been laid in the past on climatic conditions. Montesquieu, for example, attributes to the moderate temperature of Japan what was in his time the severity of its criminal law.[2] A simpler reason may be found in the military character impressed upon it by feudal institutions, and in the prevailing want of education there in the eighteenth century.

The growth of a common law has been well illustrated by judicial extensions of the rules of evidence.

That of England shut out testimony not given under oath by one who believed in the authority of the Bible. But when Englishmen gained power in India and abused it, English judges allowed the natives who might ask for redress at law to verify their story by touching the foot of a Gentoo priest.[3]

That of England, again, shut out what the courts called hearsay. If a fact was to be proved, let the man who saw or heard be produced, and not some one to whom he had told it, or some paper on which he had written it down. A suit was brought in an American court against the endorser of a note. It was vital to prove that a demand for payment had been made upon the maker. As evidence of this an entry by a notary public in his books was offered. The notary was dead. Were he alive, it was certain that his testimony would have been indispensable. Did his death give a new force to the entry which he had made? The courts admitted the evidence, and the ancient rule that none could be admitted that was not the best of which the nature of the thing was capable was thus so modified in practice as to amount to this: that if the best evidence which the party can command is offered, it should be received, if it be in a fair degree probative in its natural effect.[4]

Codification of anything more than certain parts of the common law has been looked upon with general disfavor by Englishmen and Americans.

They fear that more would be lost than gained. In the United States it is felt that codification would be closely followed by propositions of amendments and additions, and that their legislatures too often act hastily and without deliberate consideration.

Americans have also still stronger reasons, personal to themselves.

[1] Dand *v.* Kingscote, 6 Meeson and Welsby's Reports, 197.
[2] *De l'Esprit des Lois*, liv. xiv, chap. xv.
[3] Omychund *v.* Barker, Willes Reports, 550.
[4] Nicholls *v.* Webb, 8 Wheaton's Reports, 326; Thayer, *Preliminary Treatise on Evidence at the Common Law*, 507; Plumb *v.* Curtis, 66 Conn. 154, 166.

An unwritten common law now exists in most of the states, which is substantially the same. For any of them to codify it is to invite the establishment of local differences. A common law is of the highest political importance to those who have a common country.

But more than this, it goes naturally with a rigid constitution of political government. Law clothes a people like a garment, and as they wax or wane in power or wealth and diversity of interests, so must it accommodate itself in some measure to their changing form. A written constitution may be expanded by construction, but only within narrow limits and under unusual stress of circumstance. The law which is administered under it must therefore be the more readily capable of extension to the varying conditions of the times. This under a common law is attained with ease; under a code with difficulty and delay. Under a common law it comes from the people and the courts who are always at work. Under a code, primarily from a legislature, slow moving if it does its office well, and seldom in session: from the people not at all; from the courts with a timid and hesitating hand.

Looking more broadly at the relations of a common law to political organization, no treatment of the subject under consideration would be adequate which did not look beyond the circumstances and necessities of any one nation on the earth to those of all.

England and America recognize public international law as a part of their common law. The constitution of the United States refers to it as a form of law of acknowledged authority.[2] So far as their courts recognize any principles of private international law, these also become a part of their common law.

While it may have been less explicitly announced in the constitutional or judicial documents of other countries, the world is coming to the same position; and where no statute lays down a different rule, the people can rely on the protection which the law of nations and the comity of nations extend to all whose acts are called in question in a court of justice.

There is, then, besides the common law for regulating the dealings of individuals, or between individuals and the state, a law for regulating the dealings of nations and of one nation with the citizens of another. Here, indeed, we come back in principle to the *jus gentium* of the Romans, in so far as it professes to speak what all nations admit to be just and true — all nations, for we no longer have a Christendom on one side, and only barbarians on the other.

As the common law of and for a particular people is made by that people from day to day as a natural growth of social life, so the

[1] See paper on the "Part taken by Courts of Justice in the Development of International Law," *Report of Nineteenth Conference of the International Law Association*, 35; *Yale Law Journal*, x, 1; *American Law Review*, xxxv, 214.

[2] Art. I, sec. 8; *In re* Martin, Law Reports, Appeal Cases, 1900 (Probate), 211.

international law of all peoples is made by all peoples from day to day as a natural outgrowth of international relations in human society.

There must be something of a governmental character behind a law, to give it form and stamp it with authority. It may have authority from mere popular acceptance, but this stamp is needed to give assurance that the people have accepted it. In every civilized nation there is some form of judicial establishment to fulfill this office. It does not make law. It does not, at least, own that it makes it. But it declares what is law and what is not.

The last year of the last century crowned its achievements by providing such a judicial establishment for all nations. That common law of all, that *jus gentium,* which is also a *jus inter gentes,* has now a spokesman, and a record office.

Elsewhere in the series of Congresses of which this Exposition has been made the occasion, the institution of The Hague Tribunal, and the series of treaties providing for the reference to it of many of the minor controversies between nations, which have since been negotiated, will have fitting mention. It is enough here to call attention to it as the last, best outgrowth of human society at large, in its progress in the arts of life — the true arts of true living.

It looks to nothing less than the gradual formation of a common law on one subject of common concern for all nations, — a world-law.[1]

The government of the Netherlands has also, of recent years, been doing a great work, which must have broad results, toward ordering the disposition before the ordinary tribunals of private controversies arising out of a conflict between the laws of one country and those of another.

I have spoken of the history of every nation as the key to the nature and meaning of its law.

The field of comparative law is a wilderness to one who does not study it in the light of the history of the different nations. That history forbids us to hope for ultimate uniformity. It encourages us to hope for ultimate agreement on rules by which a conflict of laws operating on personal and private rights may be in most cases avoided. This will be simply by the determination of which of several rules shall govern under certain circumstances.

The recent conferences on this subject at The Hague, beginning with that of 1893 and ending with that of 1904, have approached

[1] The work of this court will be effectively supplemented by the princely foundation for the Nobel Institute for the Study of International Law, in Norway. This was formally opened at Christiania on February 12, 1904, and consists of fifteen jurists forming a consultative tribunal, ready to give advice in matters of international relation.

this task in the right way. They have sought to lay down one rule of action for all Europe only so far as this, — that when controversies depend for their determination on whether the law of this or of that country shall be applied, the decision as to the applicable law shall be made according to a certain and definite principle of selection. The laws all remain different. They must remain different. It is only the choice between them in each case for which the conventions make provision.

It is not too much to hope that they will receive, besides the ratifications of all the governments which have participated in the conferences, the adhesion of others, in other continents.

The private law as well as the public law of the world will thus, by the good offices of one of the lesser powers, rise toward a position which, once the dream of poets, may before this century closes be in great part achieved.[1]

[1] See the description of the work of The Hague Conferences for the advancement of Private International Law, in the *Official Report of the Universal Congress of Lawyers and Jurists*, held at the St. Louis Exposition, September 28-30, 1904 (pp. 117-177; 332-378).

THE PROBLEMS OF TO-DAY FOR THE HISTORY OF THE COMMON LAW

BY JOHN HENRY WIGMORE

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A chief object in the study of history is to learn the lessons which it may teach for the future. That is a sufficient excuse for considering the present subject from the practical point of view. "What *has been* done about it?" is an inquiry which will here serve to lead to the further one, "What *is to be* done about it?" In the light of an official interpretation vouchsafed by one of the Vice-Presidents of this Congress, the inquiries relevant to the problems of to-day for the History of the Common Law may be phrased as follows:

I. *What are the chief historical facts or influences still left unknown or obscure in our law and the efforts anywhere being made for the elucidation of them by research?*

II. *What are the methods by which further investigation of our legal history can be encouraged, and its hitherto attained results be made broadly known and influential in the legal profession?*

III. *What are its chief lessons and warnings for the future tendencies of our legal history?*

I. Vangerow said in his *Pandecten,* speaking of the early history of procedure in Roman law: "All books written on this subject before the year 1820 are useless"; because in that year appeared the first edition of the text of Gaius's *Institutes,* newly discovered to the world in 1816 by Niebuhr. In the same way, it might almost be said, of the historical development of English private law, that all books written before 1881 may be ignored; because in that year begins the triple lustrum marked by Mr. Justice Holmes's *The Common Law,* Sir James Stephen's *History of the Criminal Law,* the Selden Society's initial publications, Professor Ames's essays on the *History of Civil Actions,* and Sir Frederick Pollock's and Professor Maitland's treatise on the history of English law before the time of Edward I. Up to that period, to be sure, much had already been done to clear the way. The surrounding regions had been thoroughly opened; that of constitutional history, by Stubbs, Gneist, and many others;

that of economic landholding conditions, by Seebohm and others; that of commercial conditions, by Ashley, Cunningham, Gross, and others. For private law, too, the work of Palgrave, Bigelow, Young, and a few others had revealed to us that the older lines of Coke, Blackstone, Spence, Reeves, Finlayson, and Crabbe would have to be entirely discarded for the earlier part of the law. But Mr. Justice Holmes's stimulating book on the Common Law now arrived and pointed out in detail the field of necessary research for later times; in fact, it was probably this book which really created whatever now exists at large in the older generation at the bar of taste and appreciation for the study of the history of our law. Sir James Stephen's work, shortly ensuing, most philosophical, comprehensive, and entertaining, was destined to stand future testing at probably all important points. When to these were added the publications of Ames, Pollock and Maitland, there were then achieved, for the first time, certain final results on a large scale; and it became possible to study continuously the history of the main doctrines of substantive law and procedure from the beginning to present times. The researches of Thayer, Liebermann, Jenks, Salmond, Scrutton, and other recent workers in special fields and the later publications of the Selden Society and its editors, and of other English societies, merely increase the emphasis of the period's importance.

What has been gained, then, in the last fifteen years, by way of tangible results? And what remains to be especially worked upon? Here it is convenient to map out the subject in three regions; (A) the external history of English law, (B) the internal history, and (C) its transatlantic or American history; and it will be found that in these three regions the acquisitions of knowledge have been, in that order, much, less, and least, respectively.

(A) What may be called the external history includes the relation and influence of (1) Germanic law, (2) Roman law, (3) Canon law, and (4) Continental mercantile and maritime law.

(1) The Germanic law influenced the English law through two channels, just as the Missouri and the Mississippi unite to form one stream which thereafter takes the latter name. The Germanic law of the Continent was directly transferred by the Saxons, Jutes, and other immigrants of 400–800 A. D.; with this, in 1000–1200 A. D. united the law of the Norman invaders. The precise content of both of these elements, together with the resulting fusion, and the share of the contribution of each, may be said to be now for the most part known and described. For Germanic law in the large sense, the work of Brunner, Heusler, v. Amira, Gierke, Bethmann-Hollweg, Stobbe, Schroeder, and some writers in special fields, has made clear all that we need; except that Brunner's history has not gone beyond

the 900's (though this does not directly concern our own history). For Norman law, the work of Esmein, Flach, Brissaud, Viollet, Beaune, Tardif, and Glasson, with a few others, makes possible the most necessary comparisons. The connections may be observed by tracing the topics, one by one, in those writers and in Pollock and Maitland's history. What is lacking is merely a detailed analysis, to be made from this special point of view.

(2) The Roman law influence was never much more than indirect. That is, there was never a deliberate *receptio* or adoption (as in Germany from Italian jurists in the 1400's–1500's, or in Japan from the French and German codes, in the 1800's, or in the Rhine provinces from the French code in the 1800's). The revival of the continental study of Roman law was then as yet too recent; and there were other reasons. What happened was a certain large inspiration of form and method, through the minds of the clerical judges and advisers, administering the customary law during the 1100's and 1200's. Thereafter, the only direct adoption consisted in the casual intrusion of scraps of rules or analogies or phrases, here and there, into the already definite and homogeneous body of English law. This much is established by the researches of Pollock and Maitland and Scrutton. A few details only remain to be explored.

(3) The canon law was a much more large and likely element of mixture. It could and did come in by two avenues. (*a*) In the first place, the knowledge and practice of the king's clerical justiciars and advisers from 1100 to 1300 affected the form and method of English law. The crude customary English law was thus (in the words of Pollock and Maitland) rationalized by the canon law. A little, but not much, was directly borrowed. This part of the influence is known with some fullness. (*b*) In the next place, there continued for several centuries after the definite constitution of the courts (4) King's Bench, Exchequer, Common Pleas, Courts Baron, and the like (in which the customary law was distinctively English), several important courts in which either the substantive law, or the procedure, or both, or a part of either, was professedly based on the canon law; the courts of the Church, of Chancery, of Requests, of the Star Chamber, and of the Admiralty represented almost a majority of English courts, not only in number, but also in quantity and importance of judicial business. By the 1500's and early 1600's there was a keen rivalry, of which the ultimate issue really hung for a time in the balance. Professor Maitland's essay on the "Renaissance of English Law" has made it clear how narrow was the escape of the common law. Although the canon law system did lose the upper hand, and the courts which it dominated were one by one abolished or amalgamated, still its methods and its substance were in large part preserved in the field of law where they had developed in these

courts. Thus in the law of marriage, wills, chancery in general, admiralty in general, and elsewhere, portions of the substantive law and most of the procedural rules are owed to the canon law; and modern statutes have even imitated a good deal of this in the ordinary law. Most of the facts of their history are already known in detail, under the different bodies of law. What remains now for the historian is a comprehensive collation of these varied effects. This will require the broadest survey of both systems, and he who will undertake it has not yet disclosed himself.

To the foregoing influence of the Roman and canon law must be added the casual insertion of a theory or a phrase, here and there, in the common law courts, by a few of the well-read judges of earlier times, like Lord Holt, Lord Mansfield, and in modern times, Lord Bowen, Sir George Jessel, Chief Justice Kent, Mr. Justice Story, and Mr. Justice Holmes, who have occasionally invoked some analogy learned by them from the other systems. In this way the law of bailments, of fictitious assumpsit (or quasi-contract), of conflict of laws, of partnership, and perhaps other subjects, has received a few important marks. The systematic collation of these, also, has still to be accomplished by the historian.

(4) The Continental mercantile and maritime law contributed a great deal. That of the admiralty is fairly separable, and it may be said that with the Selden Society's publication of Mr. Marsden's edition of *Select Pleas of the Admiralty* and the special modern treatises, little remains unknown of the history of the law as a body. Its principal doctrines have still to be fully traced in detail. But the general mercantile law, omitting sales, land-carriers, and agency (which are almost purely indigenous topics), and including commercial paper, partnership, insurance, corporations, and general maritime law (with bills of lading and factors), is inextricably bound up with the history across the channel, and its detailed story remains one of the greatest and most interesting tasks of the future. (*a*) Of these topics, the history of corporation law is perhaps the most complicated, because, besides its economic aspects, it involves three distinct elements, the ecclesiastical corporation (more or less dependent on imported conceptions), the land-owning, franchise-owning, and quasi-political boroughs and other communities, and the commercial and industrial guilds and later joint-stock companies; the last two groups have a long indigenous history, but the analogies on the Continent are so important that their comparison is an inevitable duty. Availing himself of Pollock and Maitland's survey of the beginnings of this history, and of Professor Williston's and others' essays in the later period, the legal historian has still to trace the connected story of development in all aspects. (*b*) For commercial paper, insurance, and maritime commercial law, almost everything

(apart from two or three scattered essays) has yet to be done, that is, for the story before the 1700's. The whole scene shifts across the channel. Even there the curtain is but half raised. Brunner has illuminated part of the history of commercial paper. Goldschmidt's great history, cut short by his untimely death, did not get much beyond the Mediterranean history down to the 1400's. The Hansa and Flemish development seems not to be yet fully explored. The three centuries in England before Lord Holt (1400–1690), when all the Continental mercantile methods were being learned by English traders, form undoubtedly the most fascinating and obscure part of the untold story. To illustrate its possibilities: In 1609 a statute of James I forbade the use of merchants' account-books in evidence, except as between themselves, after one year and for items of over forty shillings. This statute does not explain itself. Perhaps it looks like a blow at the Dutch and Hansa merchants, who were intruding alien customs in London. Yet Italian history shows numerous identical statutes during the generation just preceding and following. Was this part of a general movement? Was there a borrowing? The largest sort of a survey is needed for the historian in this field, and his search must range from Venice to Wisby and Oleron, as well as from the court of Pie Powder to Lord Holt's dealings with promissory notes.

(B) The internal history of the law (so far as it has not been noticed in what was above said) may be likened in its present state to an unfinished house, whose foundations have been completely laid and whose frame and beams are erected. The roof is yet lacking and all the filling in of the walls and plaster and flooring. Its plan and shape and divisions can be plainly understood; but it cannot yet be inhabited, and many kinds of workmen must yet labor upon it. These foundations are those of Professor Maitland and Sir Frederick Pollock in their history. This frame and these cross-beams are chiefly the essays of Professor Ames. It may be said that down to the 1300's practically the whole history of our law is established; and that from the 1300's to the 1800's the history of the main doctrines of private law which have remained obscure or misunderstood (excepting commercial law) have been supplied. But the painstaking completion of scores of important details during these five hundred years remains to be done. It would be impossible here to enumerate the precise parts. Merely as examples of some of those that have been supplied may be named Mr. Scrutton's history of copyright; Professor Beale's history of a bailee's liability; Mr. Veeder's history of libel and slander; and Professor Gray's and Mr. Digby's work in real property. As examples of those that have not been supplied may be taken the history of mortgage law,[1] the history of personal suretyship, the history

[1] This gap is now being filled by Mr. Hazeltine's essays.

of auxiliary legal remedies, and of legal process in general, the history of mercantile law above mentioned (chiefly commercial paper, maritime law, and corporations), the history of conflict of laws, of insolvency laws, of public officers' liability, and of some doctrines of equity.

(C) The transatlantic or American history of our law falls naturally into four parts: (1) the colonial history, (2) the later judicial development of the substantive common law as modified by statute in a few parts, (3) the statutory forms of procedure, and (4) the adoption of bodies of Spanish law in the Southwest.

(1) The colonial law remains as yet a rich and untilled field. The doctors of philosophy have sufficiently diagnosed almost all of the political and economic conditions which surrounded it, and the editors have edited many portions of the archives; but the professedly legal historian of the private law has not yet arisen. We know that much law was brought directly over; the Massachusetts Colony sent for Coke's Reports, so that it should not be forgotten. We also know that some colonies discountenanced professional lawyers, so that much inherited law was discarded or mutilated. We know, too, that several of the many sound reforms which the Cromwellian Commonwealth had planned, but the restoration of Charles had defeated, were carried out in some of the colonies, — for example, the compulsory registration of conveyances of land. But the systematic exhumation of the private law as a whole, so far as it appears on the records, has not been attempted, even for a single colony. Nor would it be, in any part, of merely dead historic interest. Chief Justice Kent decided a great many cases from his English reading, not from local traditions or records; and after the English reports began to multiply rapidly, from 1790 to 1810, they were chiefly relied on even here. But the interesting thing is often seen, when an American rule is found to differ from an English one, that it differs because it had already been different in the tradition before 1800. All this body of prior tradition remains to be systematically expounded.

(2) The development of substantive law since 1800 is to be found usually described with sufficiency in the treatises on the special topics of the law. In the law of real property, of marriage, and of other subjects, there have been numerous important variations. But these local historical features are not so significant for the general understanding of our present law as the prior history of English law itself, and the time has hardly yet come when a comprehensive survey is either feasible or necessary. It is only to be noticed that the writers of treatises do not usually handle their subject as much in the historical spirit as it now deserves.

(3) The development of procedural changes has been widespread. For the code system, so-called, its history has been described by

Professor Hepburn and others. But in the older states, such as Massachusetts and Connecticut, which still do not use the name of code, much history has been made which deserves to be chronicled, but as yet has not been systematically described in its causes and circumstances. Such a history must begin with Bentham at one extreme and with the American judicial organization at the other, and will have much ground to cover.

(4) The land system of the United States Government titles has affected all the Southern, Central, and Western states in general, and the Spanish system in particular has affected those of California, Texas, Missouri, Arkansas, New Mexico, and Arizona. The historical aspects of this, which are interesting, have still to be depicted.

II. Our second inquiry is: *What are the methods by which the further investigation of our history can be encouraged, and its hitherto attained results be made broadly known and influential in the legal profession?* Our inquiry may be stated in two questions: (A) How can we get *more* history written? and (B) How can we make known what *is* written?

(A) The first question is a necessary one for us to face for two chief reasons: One is that our bar as a whole does not demand historical books, and therefore there are few investigators and fewer books. The other reason is that our universities in the United States do not in general exist (as those of the European Continent do) for the main purpose of providing learned men with a comfortable living while engaged in research; they are, primarily, teaching, not investigating bodies. Consequently the pursuit of historical research tends to receive less than its relative share of activity. It is our duty to canvass and to encourage all feasible means of increasing this activity. What practical means are there?

(1) First of all, those who have vindicated their right to possess this field should be urged and stimulated to continue its fruitful tillage; and not to abandon it for other fields tempting to their versatile sympathies. The greatest loss which English legal history, in the strict sense, has ever suffered is marked by Professor Maitland's excursus into the economic region of Domesday Book and the minutiæ of the primitive English land system, and by Professor Ames's varied trips into the modern realms of commercial paper, admiralty, and partnership. This Congress here assembled should issue to those scholars a peremptory writ of *Ne exeat regno Angliae juris historiae.* Let us appeal to them in the most urgent tones to continue the cultivation of those peculiar fields whose fruits no one else, in default of them, is either competent or likely to gather for a generation or more to come.[1]

[1] The motive, it may be supposed, for these great scholars' temporary abandonment of the field of later medieval and early modern history is the scantiness of

(2) Let a committee of mature scholars map out a list of the precise topics now most demanding further research, and let the younger scholars in our university faculties be thus supplied with intelligent lines for their ambitions to pursue during the coming generation.

(3) Let the universities found a journal or series of proceedings or studies in which historical essays, long or short, can be insured a publication.

(4) Let the universities unitedly offer an annual or biennial prize of a substantial sum for historical essays, perhaps requiring the amount to be spent in study abroad.

(5) Finally, but most important of all, let the materials for historical research be more amply provided. (1) As for materials already printed, this means that there ought to be at least five libraries, in different centres of this country, whose equipment in English materials reasonably approaches in fullness that of the Harvard Law School. It may not be longer possible to obtain in multiplicate all of its sources, and in any case not without some years of search. Nevertheless, the fact ought to be faced that in order to promote a healthy diffusion of historical activity, adequate means should exist in at least five widely separated places. This would require from $10,000 to $25,000 each to supplement the collections now existing at some points. (2) As for the materials not yet printed, the cause demands a decided expansion and acceleration of work. These materials, roughly divided, are (*a*) the Rolls and other judicial documents and early treatises now being gradually reprinted by the English Record Commissioners and the Camden, Surtees, Pipe Roll, and Selden Societies; (*b*) the Year Books; (*c*) the American colonial records. As to the first of these groups the various efforts now being made may be trusted to mature as rapidly as is feasible. As to the second of these groups, the Year Books, something more can be and ought to be done to speed the reëditing.[1] Since it is largely a question of funds, the United States ought to contribute a share to this task of common benefit. As a beginning, an assessment should be requested from every university in the Association of American Law Schools, in the amount of $100 each for every 200 students in its school; this assessment to be pledged biennially or triennially. As for the third group, colonial records (in which, indeed, much has already been done by Massachusetts, Rhode Island, and New Hampshire), the State Bar Associations of the Atlantic states should undertake to secure the printing by a state commission of the distinctively legal material.

the materials at present accessible for studies in that epoch. Work done now could hardly be expected to stand, after a generation. This dearth of materials (to be noticed later) can be remedied in time; but the reasons are all the stronger for hastening that fortunate day.

[1] At this moment, the arrest of progress seems to be due chiefly to the difficulty of finding persons who combine in equal and adequate degree the skill of a palæographer and the training of a lawyer.

With such expedients we shall have done something to secure a firm and lasting growth for historical research.

(B) But the second part of our question is perhaps more pressing, certainly more puzzling to answer: How can we make the Bench and Bar to know, to possess, and to utilize what is already written? True culture, says Matthew Arnold, is inspired not only by the scientific passion, but by the passion of doing good. "Culture is considered, not merely as the endeavor to *see* and *learn* this, but the endeavor, also, to make it *prevail.*" How, then, can we make the acquired truths of history prevail?

It is plain to us all that our profession in this country radically lacks taste, and interest, and common attainments, in the history of our law. It is absorbed in the practice. "Not to know what has been transacted in former times," says Cicero, "is to continue always a child. If no use is made of the labors of past ages, the world must remain always in the infancy of knowledge." Of what ultimate use is our historical research if its results remain practically unknown and unused by the profession itself in the interpretation and administration of the present law? It is depressing, it is irritating to observe how scant is the consideration, how dense the ignorance, shown by the practical administrators of the law when its history becomes material in their work. The crude pronouncements of a hundred years ago seem still to suffice. There might almost as well have been, for them, no history written during the past two or three generations. The astonishing obstinacy of this narrow professional habit may be illustrated by a single but entirely typical instance. *Ex uno disce omnes.* If there is one topic which is the pride and the commonplace of our law, it is jury trial; if there is one topic more than another which is known to have a history, it is jury trial; if there is one question more than another in which history can contribute to the settlement of modern practical questions, it is whether in trial by jury, as handed down from of old, the number twelve is essential; and, finally, if there is one tribunal more than another which has by common attribution the highest legal attainments and the least excuse for lacking them, it is the Supreme Court of the United States. In the year 1897, then, in discussing this question historically (in Thompson *v.* Utah),[1] the opinion of the Supreme Court of the United States of America declares that the well-known clause of Magna Charta pledging a trial by judgment of the freeman's peers signified trial by jury.[2] Now in 1895, two years before, the epoch-making history of Pollock & Maitland had appeared in

[1] 170 U. S. 343, 349; 18 Sup. 620.

[2] "When Magna Charta declared that no freeman should be deprived of life, etc., 'but by the judgment of his peers by the law of the land,' it referred to a trial by twelve jurors."

the face of all men; in 1891, six years before, the history of jury trial had been reëxamined in the *Harvard Law Review*, by Professor Thayer, one of the two greatest authorities on constitutional law then living, outside of the Federal Supreme Court itself; and in 1875, twenty-two years before, had appeared in an American edition Mr. Forsyth's *History of Trial by Jury*. In all three of these it had been plainly pointed out that the Magna Charta clause did *not* signify jury trial, but precisely the opposite; namely the Barons were opposed to jury trial.[1] Yet, with all these authorities staring from the library shelves, the "most exalted tribunal in the world" harks back to Blackstone's crude authority of one hundred and thirty years before; and perpetuates indelibly upon the records of our law a gross error of fact upon one of the most simple, most marked, most important, and best known points in our history. We need not aspire, perhaps, to the fortunate condition of some of the European courts, where (as at Basel in Switzerland) the Chief Justice is the author of one of the three greatest histories of Germanic law, or (as at Paris) the author of the leading history in his own language of the procedure of the Holy Inquisition. But it is surely a simple and defensible ambition that the judges of our highest court should read somebody else's book of legal history enough to keep up with the common and established facts of our past. It is held, as a rule of our law, that judicial notice will be taken of ancient books of history; and it would seem that our judges will take notice of no other kind of books! Truly it ought not to be said of our courts, as Rabelais' Pantagruel conceded to the learned doctors of the law, that as for "knowledge of antiquities and history, they were truly laden with them, — as a toad is with feathers!"

If we ask what is to be done, then, for the propagation of the general knowledge of what *is* already established by our historical scholars, we may take in turn the three parts of our legal profession, (1) the Bench, (2) the Bar, (3) the students of law.

(1) As for the Bench, we may as well concede that it is vain to hope by any measures to add this acquirement where it is lacking. "Old mastiffs," Pantagruel called them; and it is a truism that you cannot teach an old dog new tricks. Rudolph von Ihering, the witty historian of Roman law, lamenting the imperviousness of the German Bar to an interest in that history, declared that the right man would some day be born who would serve up history as appetizingly as a French cook could disguise a piece of sole-leather with one of those inimitable sauces. Pending that genius's arrival, his prescription was a good cigar, a comfortable stuffed chair, and the

[1] Pollock & Maitland, 151; Thayer, 56, 65; Forsyth, 91 ("It is a common but erroneous opinion that the *judicium parium*, or trial by one's peers, had reference to the jury").

feet on the mantelpiece *ad lib.*, as the best aid to the exercise of the historical imagination. If a box of Havanas, by Ihering's prescription, could be furnished to judges with every copy of Pollock and Maitland, perhaps we might expect something. For most judges, such artificial stimulus must be provided.

Fortunately, there are always exceptions. Where the instinct of culture, that is, of a worthy and high-souled curiosity is seated beneath the judical ermine, there will be found a judicial regard for the history of our law, — as in Doe of New Hampshire, Gray of Massachusetts, Mitchell of Minnesota, Daly of New York, Cooley of Michigan (to name some of those who have passed away), and among those still active, to name only two or three prominent ones, Holmes of Massachusetts and of the Federal Court, Dillon, now retired, McClain of Iowa, and Baldwin of Connecticut.

(2) So, also, for the practitioners at the Bar, it is too late to do anything directly except for those who still realize that knowledge is unending and who continue to be students of the law.

(3) The great practical question therefore becomes, What can we do to teach the knowledge of history to students of law, and that chiefly, of course, in our schools of law?

(1) In the first place, the materials now existing in the English language must be collected from scattered corners and brought together in a series of accessible volumes. It is practically impossible to set a class of students at work on the material in its present form, because for the purposes of a large body of students multiplicate entire sets of the periodicals or copies of rare pamphlets would be required. For example, an acquaintance with Professor Ames's indispensable researches into the history of the civil actions cannot be completely exacted of an entire class of students, simply because a school cannot ordinarily possess a sufficient number of the entire sets of the Review in which alone they are now accessible. The best practical service that can at this moment be rendered to the study of legal history would be the work of a committee doing two things: (*a*) the compilation of a bibliography of all articles in periodicals, all pamphlets, and all special chapters in general treatises, dealing with the history of any part of our law; (*b*) the selection, from this bibliography, of the most useful articles, pamphlets, and chapters, for reprinting in a series of ten or twelve volumes, to be used by instructors as reference materials in all subjects and for all grades of students; the volumes to be subscribed for by universities and other libraries to an extent sufficient to guarantee publication.

(2) In the second place, this same committee, or another one, must provide for the gradual translation and publication of three or four of the greatest Continental works of legal history on the period which shows the foundations of our own history. The history of English

law, on both sides of the channel, is undoubtedly, as Mr. Freeman used to emphasize, for European history in general, "from its first glimmerings to our own day, one unbroken drama." We must sedulously propagate this view of it. "I am ashamed," said Emerson, "to see what a shallow village tale our so-called history is." We must do all we can, for the aspiring and worthy student, to remove from our history that quality of a village tale which the technicalities of professional practice tend to emphasize. It is useless to argue, in opposition, that the student fit for these things will always have the French and German languages at his command, and that therefore a translation is unnecessary. The fact remains that a large proportion of them have not, and that the exorbitant demands of other parts of their legal education usually prevent them from undertaking these languages merely for the sake of legal history. Besides, the study of that history to-day needs special encouragement; we ought to remove all the actual obstacles, even if we think that they ought not to have been obstacles. The translations ought to include at least Brunner and Heusler on Germanic law, Esmein on French criminal procedure, Brissaud on French civil law (when the work is finished), Pertile on Italian legal history, and Goldschmidt on the history of commercial law. It is lamentable to think of those works being locked up from the mature students of this generation. The committee's task would be in four parts: (*a*) to fix upon the works to be translated and to secure the authors' consent; (*b*) to discover among the younger men those whose accomplishments and tastes would fit them for the labor of translation; (*c*) to secure from the universities and other libraries a sufficient number of subscriptions to induce a publisher to undertake the series; (*d*) to adopt a uniform vocabulary for the translation of certain common technical words, and to keep a general supervision over the process of the translation.[1]

(3) In the third place, the study of legal history should be made compulsory in law schools. The great fact of experience under the elective system in law schools is that with the multiplication and expansion of topics the subjects of history and jurisprudence are crowded out of the usual voluntary selection. The temptation of the practical, as it looms up directly ahead in the profession, is too great for the student. As between particular advanced topics of law — such as mortgages, commercial paper, and the like — no one of these seems to deserve greater claims than any other; it is rather a question of discipline undergone than of information acquired. But against any one or all of these, legal history does have a claim. Since the student ignores that claim, it should be vindicated in his behalf and regardless of his choice. History, says Montaigne, is

[1] Since the above was written, the Association of American Law Schools, in August, 1905, has appointed a committee to consider these needs.

everybody's subject. Over and above the history of the individual doctrines studied in the several courses, there ought to be a course of general reading. Our mistake hitherto seems to have been in supposing that this must indispensably involve a course of lectures; and few of us have cared to assume the *cathedra* of legal history. But the essential thing is merely that the student should gain the broadened view by a course of reading. "Reading maketh a full man." This part of the education can be sufficiently tested by an examination. This course of historical reading should include something interesting in the biographies and traditions of bench and bar. The Duke of Marlborough said that he learned all the history he ever knew out of Shakespeare's historical plays; certainly our modern legal history can best be studied in the careers of Hardwicke, Mansfield, Eldon, Erskine, Denman, Brougham, Campbell, Webster, and Choate. The course, moreover, should not be seriously attempted until the second and third years. John Morley has preached to us the natural method of learning history backward. "I want to know," he says, "what men did in the thirteenth century, not out of antiquarian curiosity, but because the thirteenth century is at the root of what men think and do in the nineteenth. It is the present that we seek to understand and to explain." Until the student has come into the possession of some of the technicalities of trover and ejectment, and has read some of the opinions of Mansfield and Eldon, it is useless to expect him to take a living interest in the details of history. Such a course can be constructed on something like the following lines: *First Year:* Selected chapters of Blackstone's Commentaries (for acquiring the orthodox traditions); R. K. Wilson's *History of Modern English Law. Second Year:* (*a*) Pollock & Maitland's *History of English Law,* volume 1; and (*b*) Campbell's *Lives of the Chancellors,* beginning with Lord Hardwicke. Extra and optional course, to count for additional credit under the elective system: (*a*) Pollock & Maitland's *History of the English Law,* volume 2, or selected essays by Ames and others; (*b*) any three of the following: Campbell's *Lives of the Chancellors, from Sir Thomas More to Lord Hardwicke;* Campbell's *Lives of the Chief Justices, from Lord Holt;* Campbell's *Autobiography;* Twiss's *Life of Lord Eldon;* Arnould's *Life of Lord Denman;* Brown's *Life of Rufus Choate. Third Year* (here branching from legal history to broadening subjects of jurisprudence): A course of reading (of one or two volumes) in specified books on any one of the following subjects: General jurisprudence, Roman law, international law, Germanic legal history. Something of this sort must surely be done if the newer generation are to be expected to know and to use the results achieved by the older scholars.

III. Our third and last general inquiry is: *What are the chief lessons and warnings for the future tendencies of our legal history?* This does not signify an inquiry into the changes which are likely to be suffered or ought to be made in particular doctrines or rules. That is a question of legislative policy. The question is this: Having in view the mode of development of our law in the past, are the general conditions which have surrounded that development likely to remain, and, if not, in what respect? Will the persons and their methods remain the same, so that we may expect the mould and form to remain? It is seen, for example, that when English law was transferred to American soil all the distinctive mechanics of development continued. The legislator and the judge, the treatise and the report, the bench and the bar, took practically the same part as before. Only the distinction between constitution and statute was novel, and the abolition of distinction between counsel and attorney. Except, therefore, in the constitutional field, it has resulted that we may to-day discuss contemporary American law in practically the same terms in which Lord Holt and Sir Edward Coke discussed it. Does the future have any promises or omens for us? Two features seem clearly marked.

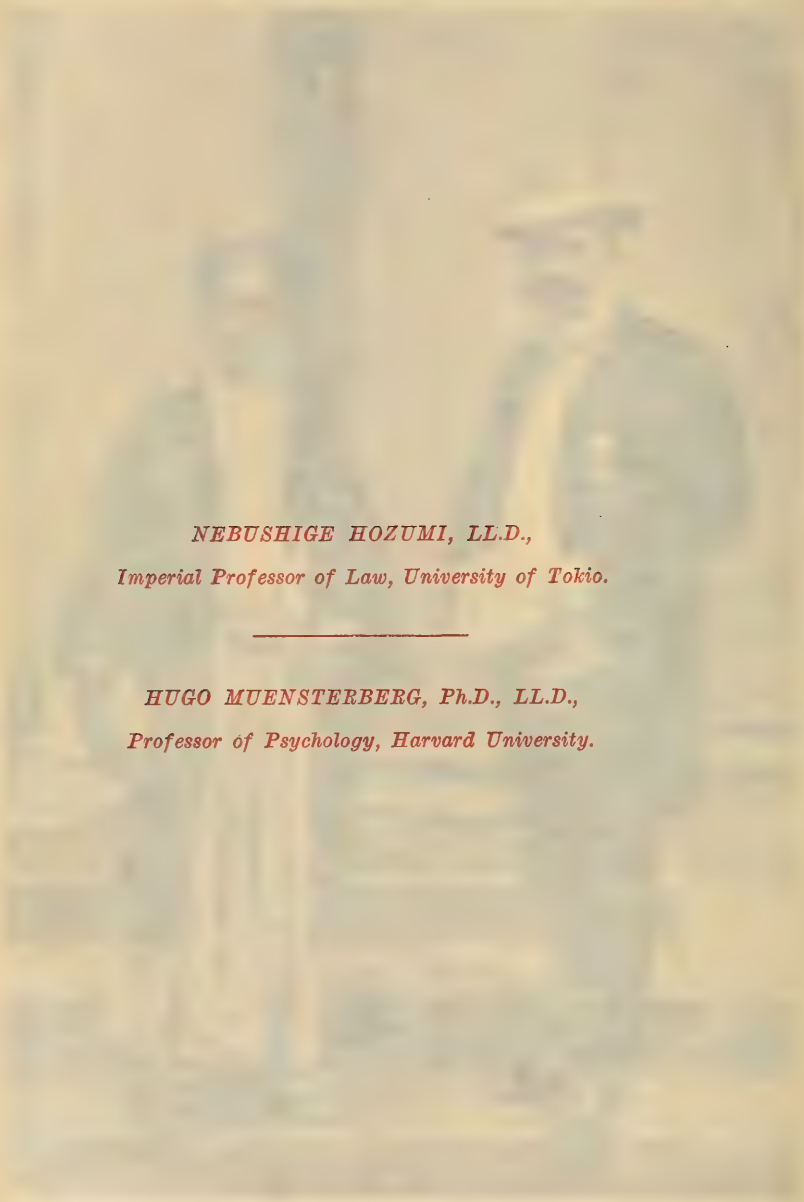
(1) An omen is certainly visible in the inordinate multiplication of printed reports of cases. The threat to the future of our law is veritably appalling. We are likely to be overwhelmed by them. The danger is that in trying to remedy the evil, when it bursts upon us, we shall take some sudden and ill-judged measure of defense. Perhaps, like Justinian or Napoleon, we shall commit the futile error of forbidding all rulings of courts to be cited as precedents. Perhaps, like the stag fleeing from his pursuers and blindly thrusting his head into the bush, we shall decline to print a portion of the opinions which we write (as some courts now do) and then feign not to see the private editions which the lawyers are nevertheless using. But in any case we must not abandon the publication of opinions. Abolish reports, said Edmund Burke, and you abolish the law of England. The essential thing is not this or that remedy, but the clear conscious vision of the momentous danger that is approaching. It will swamp our law; it will turn it into a formless mass. The mere bulk will be such as to transform our whole professional life and legal methods, in some fashion which is as yet unforeseen, but is certain to be undesirable. The most feasible and effective remedy is for the judges to refrain from writing opinions of any sort except in that small proportion of cases which seem to require them.

(2) The second feature of the outlook is a promise of encouragement, in that the vogue of wholesale codification has been stopped. This has been plain for a decade or more past. With so little of our legal history fully disentangled, and with communities of such diverse

interests to be served by the national law, the time for codification of the entire mass of law ought to be far in the future. But the codification of what is known and settled, gradually proceeding piecemeal through the mass, is a different, a feasible, and a desirable thing. This is the turn now being taken. Through the efforts of the American Bar Association and the State Commissions on Uniformity of Legislation, a signal beginning has been made, and the progress is likely to be as rapid as could be expected.

Except in these two important respects, the history of our law in the future seems destined to develop by the same methods, during the next one hundred years, at any rate, as during the past three centuries.





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SECTION C—COMPARATIVE LAW

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[*Hall* 14, *September* 24, 3 *p. m.*]

CHAIRMAN: HONORABLE JACOB M. DICKINSON, Chicago.
SPEAKERS: PROFESSOR NOBUSHIGE HOZUMI, University of Tokio.
PROFESSOR ALFRED NERINCX, University of Louvain.

THE NEW JAPANESE CIVIL CODE, AS MATERIAL FOR THE STUDY OF COMPARATIVE JURISPRUDENCE

BY NOBUSHIGE HOZUMI

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IN responding to the call of the Committee of the Congress to deliver a lecture on Comparative Law, I have, for reasons which will not be far to seek, taken the new Japanese Civil Code as the subject of my discourse. If, at the outset, I may be allowed to use a paradoxical expression in characterizing that law-book, I should say that "the East and the West, the Past and the Present, meet in the new Japanese Civil Code." I mean that the codification of private law in Japan was the result of the great political and social revolution which followed the opening of the country and the introduction of Western ideas; so that the Code embodies in itself both archaic and modern elements on the one hand, and Oriental and Occidental elements on the other. It is, so to speak, a connecting link between the Past and the Present, between the East and the West, and stands at the cross-roads of historical and comparative jurisprudence. It is, on that account, peculiarly interesting to scientific jurists, as supplying them with materials which few other systems can furnish. It will be my endeavor, in this lecture, to show the effect which the contact of the Western civilization with that of the East has produced on the civil law of the country, thereby illustrating some of the leading principles of the evolution of law by reference to the rules of the Code. The scope of my lecture being so wide, and the

time for its delivery being limited, I shall confine myself to those characteristic features of the code which are not usually found in Occidental jurisprudence.

I. *Causes of the Codification*

In order to set forth the characteristics of the Japanese Civil Code, it will be useful, first of all, briefly to explain the causes which led to the codification and give a short sketch of the history of its compilation. The causes which led to the reform and codification of the civil law are principally two.

The first is to be found in the great *social and political changes* which have taken place since the opening of the country to foreign intercourse, especially since the restoration of the Emperor to actual power in 1868. It was just half a century ago that Commodore Perry knocked at our doors to open the country to foreign trade. Aroused from the deep slumber of centuries, we rubbed our eyes, and saw Western civilization confronting us, but it was some time before we were wide awake, and realized the advantage of introducing it into our country.

In a country which had remained entirely secluded for centuries from the rest of the world, it was quite natural that distrust, which in many cases grew to be hatred, of foreigners should at first have existed among the mass of the people; and that the cry of "jō-i," or "the expulsion of foreigners," should have been raised among them. Many far-sighted statesmen and scholars, however, clearly saw the necessity of introducing Western civilization and of adopting whatever seemed conducive to the intellectual or material progress of the country, in order that Japan might become a member of the family of nations. There were others, who, while understanding very well the necessity of introducing Western civilization, joined the anti-foreign party, in order to hasten the overthrow of the Shogunate Government, for the expressions "Sonnō-jōi," or "Loyalty to the Emperor, and the expulsion of foreigners," although they had no necessary connection with one another, were at that time adopted as watchwords by the party of political reform, in order to set the mass of the people against the Shogun's Government. But as soon as their object was attained, and the present Emperor was restored to real power, they threw off the mask and kept only the former half of their watchword, "Sonnō," or "Loyalty to the Emperor."

The first act of the Emperor, on ascending the throne, was to enunciate the fundamental principles of his government in the form of a solemn oath, which has since then been known as "the Five Articles of the Imperial Oath." The Emperor declared in this oath,

(1) That deliberative assemblies should be established, and all measures of government should be decided by public opinion.

(2) That all classes, high and low, should unite in vigorously carrying out the plan of the government.
(3) Officials, civil and military, and all common people should, as far as possible, be allowed to fulfill their just desires, so that there might not be any discontent among them.
(4) Uncivilized customs of former times should be broken through, and everything should be based upon the just and equitable principle of nature.
(5) That *knowledge should be sought for throughout the world,* so that the welfare of the Empire might be promoted.

This oath has been made the basis of our national policy. How well the Emperor kept his oath, and how unswervingly his government and his people have followed the wish expressed by their sovereign, is shown by the subsequent events of our history.

The feudal system was abolished, and all the daimios or feudal lords voluntarily surrendered their fiefs to the Emperor, together with their powers to make laws, issue paper currency, and exercise both civil and criminal jurisdiction within their dominions. The four hereditary classes of the people, namely, the samurai or soldiers, farmers, artisans, and merchants, were abolished, and all could freely choose their own profession or calling. Officials were no longer appointed on account of birth, as was formerly the case, but on account of personal merits, and even the lowest born could aspire to become the highest official of the state. The family system was, as I shall show presently, gradually weakened, so that the individual began to take the place of the family as the unit of society. Schools for both sexes have been established in all parts of the empire, which are open to all classes without the least distinction. Higher education is no longer the monopoly of the samurai and the clergy. Students and officials have been yearly sent to Europe and America, to study different branches of art and science, or to investigate and report upon the methods and resources of Western civilization. Christianity, which had been very strictly forbidden during the Tokugawa Shogunate, was gradually tolerated under the new government of the Emperor, until at last freedom of religious belief and worship was secured by article 28 of the constitution promulgated in 1889. The introduction of steamships, railroads, electric telegraphs, etc., completely changed the means of communication and traveling both on land and sea. The opening of foreign trade and the changes in commerce and industry at home, by the establishment of banking and other commercial firms and factories in different parts of the country, brought about great economical revolutions among the people. The Imperial Household abolished the old ceremonial costumes, and adopted European dress for ceremonial occasions both for men and women.

The men cut off their topknots and had their hair dressed in Western fashion; they discarded their loose native dress and began to wear tight practical European dress; they now build their government offices, schools, and other public buildings in European style; they began to eat beef, the partaking of which had been regarded as something sacrilegious. It is needless to say that these political, economical, and social revolutions, which extended to every department of life, occasioned the necessity for corresponding reforms in the laws of the country, which could not be met by fragmentary legislation. Sweeping legislation by way of codification was the only way of keeping up with the rapid strides which Japan had taken during the past three decades.

The second and more immediate cause of the codification of the civil law was the earnest desire on the part of the Japanese people to put an end to the existence of the *extra-territorial jurisdiction* which had been granted by earlier treaties to the sixteen Treaty Powers of Europe and America, and to resume the civil and criminal jurisdiction over the subjects and citizens of the Treaty Powers, residing or traveling in the country. At the time that we first entered into commercial treaties with Western Powers, it was quite natural and reasonable that they should demand the reservation to themselves of jurisdiction over their own respective subjects and citizens. This was indeed necessitated by the great difference between their own laws and institutions and those of Japan, while the habits and customs of the people were also quite unlike. We saw the necessity and justice of acceding to their demand, but at the same time felt that the existence of such a legal anomaly was a disgrace to the country, and wholly incompatible with that scrupulous regard for the integrity of territorial sovereignty which ought to characterize the intercourse of independent friendly nations. So from an early date in the present reign, attempts were repeatedly made to revise the treaties and expunge from them the abominable extra-territorial clause. But every time we were met by the objection that our laws were incomplete. Although as a matter of principle, we did not admit the justice of the foreigners' objection to obeying the laws of the country to which they chose to resort, we were obliged, in fairness, to recognize the reasonableness of their objections.

After many years of difficult diplomatic negotiations, it was at last agreed that the treaties should be revised and the extra-territoriality should be abolished; and, at the same time, the Japanese Government undertook to frame codes of laws and put them in operation before the new treaties should go into effect.

The above-mentioned two causes, one internal and the other external, combined to make the work of codification one of the most urgent necessities of the time. As a preliminary step to the

work of codification, a Bureau for the Investigation of Institutions was established in the third year of Meiji (1870), and one of the fruits of the labor of that bureau was the translation of the French Codes. This translation afforded the knowledge-thirsty Japanese ideas of Western laws for the first time, and had an immense influence upon subsequent legislation and judicial decisions in the courts of law. In 1875 a Committee for the Compilation of the Civil Code was appointed for the first time. In 1878 a draft was submitted by this committee to the Government. This draft was a close imitation of the French Civil Code, both in its arrangements and in its content and was not adopted by the Government. In 1880 Professor Boissonade, an eminent French jurist, who was then a legal adviser to the Japanese Government, was asked to prepare a new draft, and in the next year, a Bureau for the Codification of the Civil Law was established, to which Professor Boissonade's draft was submitted for deliberation. The bureau was abolished in 1886, and a Committee for the Investigation of Law was appointed, composed of the members of the Genrōin or the Senate and of the Bench, with Count Yamada, the Minister of Justice, at its head. This committee made its report in 1888, and the draft was submitted to the deliberation of the Senate, and was adopted by that Council. On the 27th of March, 1890, under Law no. 28, those parts of the Code which were drafted by Professor Boissonade, that is, book II, relating to "Property in General," book III, relating to the "Means of Acquiring Property," book IV, "Security of Rights *in personam*," and book V, relating to "Evidence," were published. Those parts which were prepared by Japanese jurists, namely, book I, relating to "Persons," and part of book III, relating to "Succession," were published on the 16th of October of the same year, and the whole code was to go into operation from the 1st of January, 1893.

Thus after the arduous toil of fifteen years, Japan possessed a code of private law for the first time in her history. It was quite natural that the Code should become a topic of earnest consideration for all educated classes of the people. Especially among lawyers and politicians, a violent controversy arose regarding the merits of the new code. Those jurists who had studied English law in the Tokio University or in England or America first raised their voices against the Code and demanded the postponement of the date of its going into operation, with a view to its complete revision. The French section of Japanese lawyers, on the other hand, supported the Code and insisted upon the necessity of its going into operation at the date originally appointed. The German section of jurists, whose number was at that time comparatively small, was divided into two parties, some siding with the one, and others joining the other. Japanese lawyers were thus divided into two hostile camps, and the lively

discussion which arose among them is known as the "Postponement Campaign." The arguments pro and con put forward for the postponement and revision of the Code were many and were of varying importance. To outsiders the campaign may have seemed like a sectarian conflict between the English and French groups of Japanese lawyers. But this struggle is eminently interesting to scientific observers of the general history of law, for it was, in reality, a contest of the historical school with the school of natural law, resembling in many respects the famous controversy between Savigny and Thibaut in the beginning of the same century. This question contained an important issue, as to which theory should have a predominant influence over the jurisprudence and legislation of the country.

In order to explain this interesting event in our legal history, I must for a moment stop to give an account of the state of legal education in Japan at that time. English law had been taught in the Imperial University of Tokio since 1874 by English, American, and Japanese teachers, and also in other law schools, and a great number of the graduates had by that time already filled important positions on the Bench and at the Bar, as well as in other places, both in and out of the Government. They were all taught the doctrines of Bentham, Austin, and Maine, and most of them belonged to the school of positive law. On the other hand, there was a law school attached to the Department of Justice, in which French law was taught by Professor Boissonade and other French and native teachers. There were also two or three private law schools in which French law was taught. The graduates of these schools, who also filled important positions, had been taught the doctrines of natural law. It was quite natural that the doctrines which lawyers had imbibed in their early days of studentship should have strongly influenced their views as to legislation in their maturer days. And thus arose two opposite schools among the lawyers of Japan. In 1887, just three years before the publication of the Civil Code, the Imperial University made a reform in the programme of the College of Law. The French Law School of the Department of Justice was transferred to the University, and at the same time a German Law Section was newly established, so that there came to be three sections in the College of Law, besides a fourth which is devoted to political science. This tripartite division in the University law education could not fail to produce an enduring effect on the subsequent legislation of the country. The Civil Code had become law before the constitution came into force in 1890, and the question of the postponement of its operation had to be decided in the Imperial Diet. Accordingly a bill was introduced at the session of 1892 in the House of Representatives to postpone the operation of the Code with a view to its revision. After several

warm debates, the bill was passed by both Houses of the Imperial Diet and the operation of the Code was postponed by Law no. 8 until the 31st of December, 1896. Thus the so-called "Postponement Campaign" resulted in the victory of the "Postponement Party"; and in the following year a Codification Committee was established by an Imperial Edict. The constitution of this committee affords a very important clue for understanding the character of the new code. The committee, with Marquis Ito, then Prime Minister, as its president, consisted of members of both Houses of the Diet, professors of the Imperial University, members of the Bench and the Bar, with other eminent jurists and leading representatives of commerce and industry. The number of the members varied from time to time, but throughout, care had been taken in the appointment of members to represent every interest in society and also to represent English, French, and German schools of Japanese lawyers. The "Postponement Campaign" was very fierce while it lasted, but when the question was once settled, both parties threw off their animosity and joined hands in the work of giving the nation a code which would meet the exigencies of the time. The appointment of the three special members to prepare the draft also shows a conciliatory spirit on all sides. Professors Tomii, Ume, and myself were appointed to prepare the original draft which was to be submitted to the deliberation of the committee. Professor Tomii, although he had studied law in Paris and is *docteur en droit,* and thus belonged to the French school, sided with the "Postponement Party," and not only formed a remarkable exception among his comrades, but was one of the stanch advocates of postponement and revision. Professor Ume, who had studied law in Lyons and is also *docteur en droit,* was one of the champions of the "Anti-Postponement Party." I myself studied English law in the Inns of Court in London and am a member of the English Bar; and I belonged to the "Postponement Party." Both Professor Ume and I also studied law in the University of Berlin, after we had finished our courses in France and England respectively. Thus it will be seen that two out of the three framers of the Code represented the French section, but one of them belonged to the "Postponement Party." While two belonged to the French and one to the English school, two of them had studied German law.

The constitution of the committee, especially that of the Drafting Committee, made it clear that they could not agree to take the law of any one country as an exclusive model upon which to frame the new code. Professor Boissonade's code was principally based upon the French Civil Code, but the framers of the revised code agreed to collect the codes, statutes, and judicial reports of all civilized countries which existed in the English, French, German, or Italian

languages, besides international treaties which have reference to the rules of private law. They accordingly collected more than thirty civil codes, including many drafts, such as the draft of the Civil Code of New York, the draft of the German Code, the drafts of the Belgian Code, besides other codes, statutes, reports, and treaties, and comparing the rules or principles which exist in different countries, adopted whatever seemed to be best suited to the requirements of the country. In the original draft which was submitted to the deliberation of the committee, an explanation was attached to each article, stating the reasons for the adoption of the rule. The corresponding articles or rules which exist in other countries, as well as rules, precedents, and customs in our own country, were also cited for the consideration of the committee. This method of preparing the draft gave a characteristic feature to the new code. The Japanese Civil Code may be said to be a *fruit of comparative jurisprudence.* At first sight, it may appear that the new code was very closely modeled upon the new German Civil Code; and I have very often read statements to that effect. It is true that the first and second draft of the German Code furnished very valuable material to the drafting committee and had a great influence upon the deliberations of the committee. But on close examination of the principles and rules adopted in the Code, it will appear that they gathered materials from all parts of the civilized world and freely adopted rules or principles from the laws of any country, whenever they saw the advantage of doing so. In some parts, rules were adopted from the French Civil Code; in others, the principles of English common law were followed; in others, again, such laws as the Swiss Federal Code of Obligations of 1881, the new Spanish Civil Code of 1889, the Property Code of Montenegro, Indian Succession and Contract Acts, or the Civil Codes of Louisiana, Lower Canada, or the South American republics, or the revised Civil Code of New York, and the like gave material to the framers of the Code. In January, 1896, the report of the Committee on book I, "General Provisions," book II, "Rights *in rem*," and book III, "Rights *in personam*," was submitted to the Imperial Diet and was adopted with only a few unimportant modifications. In April of the same year, these three books were promulgated as Law no. 89. The remaining two books on "Family" and "Succession" were submitted to the Imperial Diet in May, 1898, and adopted by both Houses with only slight modifications, and were promulgated as Law no. 90 in June; and the whole Code came into force on the 16th of July, 1898.

The foregoing sketch, brief as it is, of the history of the codification of the civil law will be sufficient to show that the new Japanese Civil Code is the result of the comparative study of laws, and offers in its turn valuable materials for the study of comparative jurisprudence.

II. *Objects of the Codification*

I think it may be laid down as a general rule regarding the evolution of law, that *a comprehensive legislation generally follows a great social revolution.* If laws are social phenomena, it is quite natural that social changes should always bring with them corresponding changes in the laws of the country. The legal history of all nations, either ancient or modern, shows that the objects sought to be obtained by codification fall under one of the following four heads, namely, pacification, innovation, unification, and simplification.

(1) Sometimes codification takes place after a great social disturbance in order *to restore peace and maintain order by means of comprehensive legislation.* This was true of the ancient codes of Draco and Solon in Greece, the Law of Twelve Tables in Rome, and the codifications in China since the Han Dynasty, where it was customary for the founder of every dynasty to publish a new code of laws after he had gained the imperial power by force of arms. In Japan the codes of the Hōjō and the Tokugawa belong to this class.

(2) Laws are often codified either *to bring about a social reform,* or *to adjust the law to the requirements of the new state of things* which has been brought about by social reform. To this class belong most of the codes which have been promulgated in Japan since the Restoration of 1868.

(3) Very often codification takes place with a view to *the unification of different local laws and customs,* so that the country may be governed by a uniform code of laws. One of the objects of the Code Napoléon, the Italian Civil Code of 1865, and the new German Imperial Codes was, in each case, the unification of the laws of the country. It was the principal object of the first Japanese Criminal Code of 1870, which was published soon after the Restoration, to establish unity in criminal law throughout the empire, by abolishing the particular laws which existed within the jurisdictions of the daimios.

(4) Simplification of law by means of *logical arrangement* or *consolidation* of legal rules constitutes the most usual motive for codification in modern states.

Now the majority of codifications, except sometimes those coming under the fourth class just mentioned, take place after great political or social revolutions, in consequence of which pacification, innovation, unification, or simplification becomes necessary. The history of codification in Japan amply exemplifies the above statement. The promulgation of the Taihō Code of 702 A. D. was the result of the great political and social revolution, which followed

the introduction of Chinese civilization into the country. The next great codification, the framing of the Jōyei Shikimoku in 1232 A. D. under the Hōjō Regency, was necessitated by the great political and social changes which had taken place since the establishment of the feudal system under the military government of the Shoguns. The new Japanese Civil Code is, as I have explained above, the result of the revolution which followed the opening of the country to foreign intercourse. Thus, *each of the three great epochs in Japanese history, the introduction of Chinese civilization, the establishment of feudalism, and the introduction of Western civilization, has been followed by codification.* The chief object of the Taihō Code, belonging to the first period, was innovation; that of the Jōyei Shikimoku, belonging to the second period, was pacification; while the framing of the new Civil Code had for its objects innovation and unification as well as simplification.

III. *Methods of Comparative Jurisprudence*

Looked at from another point of view, the new Japanese Civil Code may be taken as an illustration of the effect which the contact of Western with Eastern civilization has produced on the laws and institutions of the country. In this respect I must first say a few words as to the methods of comparative jurisprudence. Hitherto there have been three methods of comparison in vogue. One of them takes the *law of a particular state* as the unit of comparison, and comparing with it the laws of different states, finds similarities and divergencies among them, and deduces from them certain principles of law. This is the method generally adopted by jurists. In France, for instance, where comparative law is studied with greatest zeal, valuable materials for this method of investigation are furnished by the publications of the laws of different countries in the *Bullétin* and *Annuaire* of the "Société de Législation Comparée," and by the numerous translations of foreign codes by Foucher, Antoine Saint-Joseph, Lehr, Dareste, Grasserie, Levé, Turrel, Prudhomme, Lepellétier, and other eminent jurists.

There are others, who, perceiving that there are common features in the laws of each *race*, take a wider basis for their investigation and make the laws of particular races the units of comparison, and compare the one with the other.

There are others, again, who take a still wider basis, and compare legal phenomena of different peoples without regard to nationality or race.

Of these three methods, the first may compare, for instance, English law with French, the second Germanic laws with Slavonic laws, while the third takes up, perhaps, the marriage laws and customs

of European nations, American Indians, African negroes, Australians, and Chinese.

All these three methods of comparison, which I have mentioned above, are useful and legitimate methods of investigating the principles of law; and none of them can be rejected to the exclusive adoption of the other. But I think another method can be added to the list, which, though not hitherto employed, may be very advantageously adopted in the investigations of general principles of law. I mean a method which takes for the unit of comparison a certain group of laws having a *common lineage* or *descent*. If we examine the laws of different countries which have made a certain progress in civilization, we shall find that the law of each country consists of *two elements;* namely, the *indigenous element* and the *foreign element;* and except in uncivilized or barbarous communities which have no intellectual intercourse with other countries, instances are very rare in which the law of any country is found consisting exclusively of indigenous elements. With the progress of means of communication and the consequent increase of intercourse among different peoples, the exchange, not only of material but also of intellectual products, becomes greater; and in regard to law, it may be laid down as a general rule that the higher the community stands in the scale of civilization, the greater is the proportion of the foreign to the indigenous element. This comes from what is called the reception or adoption of foreign laws.

Now, when the rules or principles of law of one country are adopted in another, there arises a sort of *kinship* between the laws of those two countries. One is descended from the other, and the *relationship, as it were, of ancestor and descendant is created between them.* The old law which served as a model or source of the new law may be called the "Parental Law" or "Mother-law" in relation to the new, which stands in a filial relation to the parental law.

The law of one country may be adopted in other countries *directly*, as Roman law was received in Germany, or *indirectly*, that is, it may be first adopted in one country, and then through that country it may be received in the third, as European law, which has first been received in Japan, and is now being introduced through her into China and Corea. Or again, the law of a mother country may be extended to her colonies or dependencies, as in the case with English law in British colonies.

In this way, the laws of all civilized countries may be divided into several groups, each comprising laws of many countries, but having common features and characteristics owing to their common origin. These different groups may be compared one with another, in order to find out uniformities and divergencies among them, and thus establish general principles of law. This method of

comparative study of law, which may be called the *genealogical method*, to distinguish it from the other three, has the advantage, among many others, of combining the historical with the comparative method.

IV. *Great Families of Law*

If, in order to take the genealogical method of comparison, we classify the laws existing at present in different parts of the world, we shall find that there are at least seven Great Families of Laws; namely, (1) the Family of Chinese Law, (2) the Family of Hindu Law, (3) the Family of Mohammedan Law, (4) the Family of Roman Law, (5) the Family of Germanic Law, (6) the Family of Slavonic Law, and (7) the Family of English Law. I have called these groups the "*Great Families of Laws*," because this classification is not meant to be exhaustive or exclusive. There are many smaller branches of law, not belonging to any of the above mentioned families, which are, none the less, very important for the genealogical method of comparative study, but for the purpose of the present lecture they need not be mentioned here.

V. *The Position of the Japanese Civil Code among Legal Systems of the World*

I have been at some length in explaining this method of comparative jurisprudence, in order to show the position of the new Japanese Civil Code in the general legal history of the world. Since the first introduction of Chinese civilization into our country, and the consequent Reform of the Taika Era (646 A. D.), the work of which was completed by the publication of the famous Taihō Code in 701 A. D., *Japanese law has belonged to the family of Chinese law* for more than one thousand six hundred years; and notwithstanding many great changes in the laws and institutions of the country which have taken place since that time, the basis of Japanese laws and institutions has always been Chinese moral philosophy, together with the custom of ancestor-worship and the feudal system.

The Criminal Code (Shin-ritsu-koryō), which was published in 1870, three years after the Restoration of 1868, was modeled upon the Chinese Codes of Tang, Min, and Shin Dynasty, with certain modifications suggested by old Japanese laws. Only three years later, that code was revised, and a new code was published under the title of the Revised Criminal Code (Kaitei-Ritsurei). In the framing of that new code, some European codes, especially the French, were consulted and adopted to a certain extent. Now these two codes mark the transition period in the history of Japanese law. *The former was the last in the Chinese, and the latter the first in*

the European, system of legislation. The Japanese law was at that time rapidly passing *from the family of Chinese law to the family of European laws.*

From the beginning of the present reign, the Imperial Government was very active in making laws to meet the exigencies of the new state of things. But finding that such fragmentary legislation could not keep pace with the rapid progress of the nation and meet the requirements of the changing circumstances, the Daijōkwan, or the Great Council of State, which was then the supreme legislature, issued a law (no. 103 in the eighth year of Meiji, 1875) which provided in art. 3, that judges should decide civil cases according to the express provisions of written law, and in cases where there was no such written law, according to custom. In the absence of both written and customary laws, they were to decide *according to the principles of reason and justice.* This law flung wide open the door for the ingress of foreign law, and marks an epoch in Japanese legal history. Now by this time, translations of the French codes and other law-books had appeared, and there were some judges on the Bench, though comparatively few at that time, who had studied English or French law. The rapidly changing circumstances of Japanese society brought many cases before the court for which there were no express rules, written or customary, and the judges naturally sought to find out "the principles of reason and justice" in Western jurisprudence. The older members of the Bench, who had not been systematically taught in Western jurisprudence, consulted the translations of the French and other European codes and text-books, while the younger judges who had received systematic legal education in the universities, either at home or abroad, and whose number increased from year to year, consulted Western codes, statute-books, law-reports, and juridical treatises, and freely applied the principles of Occidental jurisprudence, which in their opinion were conformable to reason and justice. Blackstone, Kent, Pollock, Anson, Langdell, Windscheid, Dernburg, Mourlon, Baudry-Lacantinerie, and other text-books and the numerous commentaries on European codes, statute-books, and law reports were looked upon as repositories of just and reasonable principles and supplied necessary data for their judgments. In this manner Occidental jurisprudence entered our country, not only indirectly, through the *University* and other law colleges, but also directly through the *Bench* and the *Bar.*

The above law, bold as it was, was meant to be only a temporary measure to supply the immediate wants of the changing society, until a complete and systematic code should have been compiled. In the mean time, the work of codification had been steadily proceeding, and resulted in the promulgation of the Criminal Code and the Code of Criminal Procedure in 1880, the Revised Code of Criminal

Procedure and the Code of Civil Procedure in 1890, the new Civil Code in 1896 and 1898, and the Commercial Code in 1899.

What I have said above will suffice to show that the new Japanese Civil Code stands in a filial relation to the European systems, and *with the introduction of Western civilization, the Japanese civil law passed from the Chinese family to the Roman family of law.*

VI. *The Publication of the Code*

One of the most remarkable changes which the introduction of Western jurisprudence produced in Japan was the change in the *conception of law.* Previous to the Restoration of 1868, *there was no idea that publication was essential to law.* On the contrary, during the time of the Tokugawa Shogunate, most laws, especially the criminal code, were *kept in strict secrecy.* They were all in manuscript and were neither allowed to be printed nor published; and none but the judges and officials who were charged with the duty of carrying the rules into effect were allowed the perusal of the codes and the records of judicial precedents. The famous Criminal Code of the Tokugawa Shogunate, commonly known as the "Hyakka-jō," or "The Hundred Articles," bears the following injunction at the end: "The above rules have been settled with His Highness's gracious sanction, and nobody except the magistrates shall be allowed to peruse them."

The subsequent compilation, called "Kwajō-rui-ten," contains the same injunction with the following addition: "Moreover, it is forever forbidden to make extracts from this code, even of one article thereof."

In 1841 thirteen authentic manuscript copies of the Code were made, and all the other copies and extracts which the clerks had made for their own use were ordered to be produced and burnt. A certain Ono Gonnojo and his son were severely punished for publishing a book which contained the "Hundred Articles" of the Code. An owner of a certain circulating library who had a manuscript book showing the days on which the magistrates transacted business, or the *dies fasti* and *nefasti* of the judicial court, was punished with banishment from his place of abode. These and many other like cases which occurred during the Tokugawa Shogunate show in what strict secrecy some parts of the laws were kept in those times.

The Taihō Code of 702, Jōyei-Shikimoku of 1232, and other old laws before the time of the Tokugawa Shogunate, were printed and distributed *among officials* of the Imperial or the Shogunate Government, the governors of provinces, chiefs of clans, etc., but they were not published in the sense in which laws are published in the present day. The Jōyei Shikimoku, which was the fundamental code during the time of the Hōjō Regency, concludes with an oath by the councilors, to the effect that they would render justice with impartiality

and according to reason, and in case of disobedience to the rules and principles set forth in the Code, they would incur the wrath and the punishment of the gods. These laws were all *commands addressed to the officials, not to the people. They were rules for the conduct of officials, not rules of conduct for the citizen.* It was upon officials only that law imposed the obligation to observe the rules of law in their relation to the people, whether they acted in administrative or in judicial capacity. The people were merely passive objects of the law, and it was their part implicitly to obey the commands of officials. Austin and others, who define law as a command of the lawgiver, mean thereby a command addressed to, and imposing obligations upon, the citizen. But in Japan, *this conception was only reached after the introduction of Occidental jurisprudence* into the country. Two legislative acts in the beginning of the present reign very clearly show this transition in the nature of law. The publication of the new Criminal Code, "Shinritsu Koryō," in the third year of Meiji, marks the first step in the revolution of the legal idea. The policy of the Tokugawa Government was based upon the famous Chinese maxim, "Let people abide by, but not be apprised of, the law" (民可使由之, 不可使知之), and went so far as to keep the law in strict secrecy. Although the first Criminal Code was modeled upon Chinese codes, the new Imperial Government took another and wiser Chinese maxim, "To kill without previous instruction is cruelty" (不敎而殺虐也), and caused the new code to be printed and published. I have said that the first Criminal Code was based upon the Chinese system, and in the amended Code the French Criminal Code was consulted. The comparison of the Imperial Proclamations which form the preambles to these two codes is very interesting, as showing a great change in the conception of law that took place during the three years which intervened between the first and the second code. In the Imperial Proclamation which is prefixed to the first code, his Majesty enjoins his *officials to observe the rules of the Code;* while in the Imperial Proclamation attached to the second code, it is his *subjects as well as his officials* that are so commanded. In the same year with the publication of the second code, that is, 1873, a law was enacted (ordinance 68 of sixth year of Meiji), in which it was declared that "henceforth every law shall, on its promulgation, be posted up in convenient places during thirty days *for the information of the people.*" Since that time several laws have been passed, in which the same principle is carried farther, and now the publication which is made in the Official Gazette has become an essential step in giving them binding force.

We have now reached the *third stage* in the evolution of the idea of law. At present, according to art. 37 of the constitution, every law requires the consent of both Houses of the Imperial Diet. Of

the five codes which have been promulgated, the new Civil Code was the first which became law under the new constitutional government, and therefore, with the consent of the Diet.

From what I have said above, it will be seen that there are *three stages* observable in the development of the idea of law. At first, publication was not essential to the binding force of the law. Laws were commands addressed to the *magistrates*, not to the people. The people were merely the *passive object of the operation of laws*. Next comes an epoch when the laws become commands addressed to the *people*, and publication forms an essential element of the law. People become the *direct object* of the law, and a party, as it were, to its operation. In the third and final stage, the people not only become a *party to the operation of the law*, but a *party to the making of it* through their representatives.

VII. *The Appearance of the Code*

The Civil Code drafted by Professor Boissonade, which became law but never went into operation, was divided into the following five books; namely, book I, "Persons"; book II, "Property in General"; book III, "Means of Acquiring Property"; book IV, "Security of Rights *in personam*"; and book V, "Evidence." The objections which were raised against this arrangement were many, some from scientific, others from practical, points of view; but it is needless to mention them here. Some will appear when I come to compare it with the arrangement of the new code. The framers of the latter did not follow the arrangement of the first code, nor did they adopt the classifications of the French or other codes based upon the *Institutes* of Justinian.

The new Civil Code is divided into the following five books, according to the plan which German jurists call "Pandekten-System"; namely, book I, "General Provisions"; book II, "Rights *in rem*"; book III, "Rights *in personam*"; book IV, "Family"; and book V, "Succession." One of the reasons for rejecting the so-called "Institutionen-System," and adopting the "Pandekten-System" was that the latter system of arrangement was peculiarly suited to the present state of law in Japan.

The first code, following the French Code, had no distinct portion assigned to general rules applicable to all other parts. This system rendered frequent repetition of the same rules necessary in different parts of the code, thereby making the whole work a voluminous code, containing 1762 articles; while the new code, following the Saxon Civil Code and the then draft of the German Civil Code, placed at the beginning all the general rules relating to persons as subjects of rights, to things as objects of rights, and to facts and events by which rights are acquired, lost, or transferred. This method of arrangement avoided

unnecessary repetitions and made the body of the law succinct, the new code containing only 1146 articles.

The new code, besides having a book devoted to general provisions common to all legal relations, has distinct places set apart for the laws of family and succession. In the Code drafted by Professor Boissonade the law of family was included in book I, relating to "Persons," and the law of succession formed a part of book III, relating to the "Means of Acquiring Property." Now this arrangement formed one of the strong reasons for postponing the operation of the first code and reconstructing it on an entirely new basis.

Before the Restoration it was the *family*, and *not the individual*, that formed the unit of society. The family was then a corporation; and as a general rule, only the house-head could hold public office or private property, or transact business, all other members of the family being dependent upon him. But since the Restoration, this state of things has changed, and the disintegration of the family is rapidly going on. The family has now ceased to be a corporation in the eyes of law, and the dependent members of the family or the house-members can hold office or property or transact business equally with its head. Japanese society is now passing *from the stage of family-unit to the stage of individual-unit.* But still the family occupies an important place in the social life of the people, and there are many rules which are peculiar to their family relations, and which ought, on that account, to be grouped together and separated from the rules relating to persons regarded simply as individuals. The "Pandekten-System" is peculiarly suited to this transient state of society, for it provides for the rules relating to persons in their capacity as individuals or members of a society in the general part, and sets apart a distinct place for those rules which relate to persons in their capacity as members of a family. In civilized societies, the rules which regard men as individuals belong to general law, while those which regard men in their family relations belong to particular law. But in less civilized communities the case is just the reverse; the *family law may be said to form the general law,* the law relating to persons in their individual capacity falling under the category of *particular law.* Japan is now in a transition stage; so that the placing of the rules relating to individuals in the general part and the rules relating to family relations in the particular part of the Code is not only logically correct, but is especially suited to the present state of the law of Japan.

As to the place of the succession law in the Code, strong objection was raised against the arrangement of Professor Boissonade which put it in book III, under the head of "Means of Acquiring Property." In Japan, as I shall show presently, succession cannot, at least as regards the most usual kind of it, be regarded as a mode of acquiring property.

Comparative study of succession laws of different peoples in different degrees of civilization shows that there are *three stages in the evolution* of this branch of law. In the first and earliest stage, succession is regarded as the mode of perpetuating the *worship* of ancestors; next comes the time when it is regarded as a mode of succeeding to the *status* of deceased persons; and it is only in the last stage that succession becomes a mode of acquiring *property*.

Now in Japan, until recently, as the family was a corporation the only person who could hold property was the head of a house. Consequently the only kind of succession which was then recognized by law was "katoku sōzoku," or the *succession to the headship of a house*, which was the succession to status, and the house-property descended to the heir as an appendage to the status of the house-headship. It is only since house-members were allowed to have independent property that succession which can properly be said to be succession to property began to be recognized. So there are at present two kinds of succession, *status-succession* and *property-succession*, existing side by side. The status-succession cannot be put under the category of the law of property, nor can the property-succession be put under the law of persons. The arrangement of the "Pandekten-System," which devotes a particular book to succession law at the end of the Code, is peculiarly suited to this state of law, and recommended itself to the framers of the new code in preference to the classification adopted by Professor Boissonade.

VIII. *The Introduction of the Notion of Right*

It will be seen, from what I have stated above, that the classification of rules in the new Civil Code is made upon the basis of *primary distinctions regarding rights*. But the notion of right did not originally exist in Japan, before the introduction of Western jurisprudence. Many writers assume that right is coeval with law, and law and right are only two terms expressing the same notion from different points of view. Some even go so far as to affirm that right is anterior to law, and the latter exists only for the assurance or protection of the former. In Japan, however, the idea of right did not exist so long as her laws belonged to the Chinese family. There was indeed the notion of *duty* or *obligation*, but neither the notion of right nor the word for it existed either in Japanese or Chinese. The nearest approach to it in Japanese was perhaps "*bun*," which means "*share*" or "*portion*." This word was frequently used to express the share or part which a person had in society and which he expected that society would recognize as his due. But this word was not quite definite in its meaning, and was more often used in a contrary sense, expressing a person's *duty*, or sometimes the *part* or *limit* which he ought not to exceed. So, when the notion of right was first introduced into Japan, there was no fit

word to translate it, and a new word had to be coined to express this novel idea. The late Dr. Tsuda, who had been sent to Holland by the Shogunate Government to study law in the University of Leyden, on his return to Japan published a book entitled *A Treatise on Western Public Law*, in 1868, the year of the Restoration. In this book he used the new word "*ken-ri*" for right, which he coined by combining the words "*ken*," or "*power*," and "*ri*," or "*interest*." This word has since been received to express the notion of right. Sir John Lubbock in his book *On the Origin of Civilization* (ch. viii) says that lower races are "deficient in the idea of right, though familiar with that of law." Sir Henry Maine says that "jus" among Roman lawyers generally meant not "a right" but "law"; and that Romans "constructed their memorable system without the help of the conception of legal right." I think it may be laid down as a general rule of the evolution of law that *laws from being the rules of duty become the rules of right. Early laws impose duty but do not confer right.* But in the course of time, men begin to realize that the benefit which results to any one on account of duty imposed upon another is of greater importance than the duty itself; so that right, which was at first only the *secondary notion* and nothing more than the reflection of duty, began to be regarded as the *primary* object of law. This change in the conception of law has taken place in Japan within the last forty years, and has resulted in the classification of the rules of the Civil Code on the basis of right.

IX. *The Legal Position of Woman*

With reference to book I of the Code, which relates to "General Provisions," I shall only touch upon the subjects of the *legal position of woman* and that of *foreigners;* for these are the two points where the Code has made greatest changes in that part of the law. I shall first speak of woman.

Three periods may be distinguished in the history of Japan as to the legal position of woman; the *first* corresponding to the period during which our national law consisted solely of indigenous elements; the *second* when Japanese law belonged to the Chinese family of law; and the *third* dating from the time when our law passed from the Chinese to the European family of law.

The first period extends from the beginning of our history to the introduction of Chinese civilization. During this period, women seem to have occupied a higher place than in later times, filling positions of importance and honor in state, religion, and household. Perhaps the higher position which women occupied during the early period of our history was due partly to the primitive simplicity and the absence of artificial doctrines, which later on assigned a subordinate position to women. The first Imperial Ancestor and the central figure

in national worship is a goddess, "Amaterasu O-mi-Kami," or the "Great Goddess of the Celestial Light." There was no law to prevent female members of the Imperial family from ascending the throne, and there have been many Empresses who ruled the Empire. The Empress Jingo invaded and conquered Corea at the head of a large army.

With the conquest and subjugation of Corea by this "Empress of God-like Exploit" begins the second period in the history of the legal position of woman in Japan; for from this time Chinese civilization began to enter Japan, first through Corea, and afterward from China directly. It was chiefly the doctrines of Chinese moral philosophy that changed the primitive state of comparative freedom and independence of woman, and placed her in an abnormally inferior position. The Chinese *doctrine of the perpetual obedience of woman* to the other sex is expressed in the precept of "the *three obediences*" (三從) — "obedience, while yet unmarried, to a father; obedience, when married, to a husband; obedience, when widowed, to a son."

It is curious to note, by the way, that an exact counterpart of this doctrine of three obediences is to be found in Hindu law. In one place Manu says, "Day and night women must be kept in dependence by the males of their family" (Manu IX, 2, Buehler's transl.); and in another place, "In childhood, a female must be subject to her father; in youth, to her husband; when her Lord is dead, to her sons" (v, 148).

Buddhism and feudalism contributed to the keeping of woman in a state of dependence. Buddhism regards woman as an unclean creature, a temptation or snare to virtue, and an obstacle to peace and holiness. Feudalism, which disdained anything effeminate, also regarded woman in the light of a temptation to courage and faithful performance of duty, and, although she was treated with kindness and consideration far above that received in other Asiatic countries, she did not command that romantic homage which the gallant knights of Medieval Europe paid to the other sex. Professor Chamberlain, one of the best authorities on Japan, writes: "Japanese feudalism — despite its general similarity to the feudalism of the West — knew nothing of gallantry. A Japanese knight performed his valiant deeds for no such fanciful reward as a lady's smile. He performed them out of loyalty to his lord, or filial piety towards the memory of his papa."

Thus these three factors, Chinese philosophy, Buddhism, and feudalism, combined to place the Japanese woman in a state of dependence during the second period. She could not become the head of a house; she could not hold property nor contract in her own name; she could not become a guardian of her own child; she could not adopt a child in her own name; in short, she had no independent

status and was excluded from the enjoyment or exercise of almost all rights.

But in the third period, during which European civilization has been introduced, female education has spread throughout the country, Western jurisprudence has superseded Chinese, and Japanese law has become a member of the European family of laws, a great revolution has come over the social and legal position of woman. This reform was consummated by the publication of the new Civil Code. This code "created the new legal woman," as an able writer on Japan has expressed it. (Clement's *Modern Japan*, ch. xiii.) It proceeds upon the principle of equality of the sexes, and makes no distinction between man and woman in their enjoyment and exercise of private rights, so long as the woman remains single. She may now become the head of a house, in which case all house-members, whether male or female, — even her husband when she is married, — come under her power and are legally dependent upon her. She may exercise parental authority over her own child, if her husband be dead. She may adopt children either alone, when she is single or a widow, or in conjunction with her husband, when married. She may make any contract or acquire or dispose of property in her own name. In short, she may be a party to any legal transaction, as long as she remains *feme sole*. When she is married, her state of coverture obliges her to obtain the permission of her husband in doing certain acts, which may involve grave consequences upon their conjugal life; such as contracting debt, acquisition or loss of immovables or valuable movables, instituting legal proceedings, accepting or renouncing succession, entering into contract of personal service, etc. Even in regard to these acts, she cannot be considered as laboring under legal incapacity, for when she does these acts without her husband's permission, they are not void, but only voidable, that is, liable to be annulled by her husband. (Civil Code, art. 14.) With her husband's permission she may also engage in business, in which case she is considered in regard thereto as an independent person. (Civil Code, art. 15.) That the Civil Code places husband and wife on an equal footing, except when consideration for their common domestic life requires some modifications, may be seen from the provision of art. 17, which allows a wife to do the acts above mentioned without the permission of her husband "when the interests of the husband and wife conflict," and also from the provision of art. 790, in which it is stipulated that "a husband and wife are mutually bound to support and maintain each other."

The great revolution in the legal position of woman which the new Civil Code brought about is nowhere so clearly seen as in its regulations relating to the *property of married women.*

The laws relating to married women's property are different in

different countries, and vary with the degree of civilization attained; but broadly, they may be grouped into the following *four systems:*

(1) *System of Conjugal Unity.* — In those systems of law which regard man and wife as *one person*, or in which the wife's personality is merged in that of the husband, whatever the bride possesses at the time of marriage becomes the property of the husband, as was the case in the English common law, or under the doctrine of *Manus* in the early Roman law, or that of *Mund* in the early Germanic law.

(2) *System of Dowry.* — Another system sets aside a part, at least, of the bride's fortune as a common conjugal fund, the management of which belongs to the husband, as was the case at one period under Roman law, and under the Code Civil, and as is now practiced in the south of France.

(3) *System of General Community of Conjugal Property.* — This system exists under the Code Civil side by side with the dotal system, principally in the northern part of France.

(4) *System of Separate Property.* — Under this system marriage makes no change whatever in the property rights of the bride, as is the case in England since the Married Woman's Property Act of 1882, and in many states of the United States.

Broadly speaking, the usual process in the evolution of the law of conjugal property is in the order which I have stated above, the system of unity corresponding to the lowest, and the system of separate property to the highest, scale of civilization. But in this respect the compilers of the new code have taken a decided step, and leaped, at one bound, *from the system of complete merger of wife's property in that of the husband to the system of separate property.* According to the Code (arts. 793–807), persons who are about to marry are allowed to make any contract with regard to their conjugal property, which will be binding upon them and can be set up against a third person, if registered before the registration of the marriage. If such contract be not made between them, their relations in regard to property are governed by the general rules of conjugal property, which, among others, lays down the fundamental rule that the property belonging to a wife at the time of marriage or acquired after marriage in her own name shall be her separate property. (Civil Code, art. 807.)

The reform in the law of divorce, which the new Civil Code made, also marks a great advance as regards the legal position of woman. During the second period, while the Japanese law belonged to the Chinese family, the law of divorce was based upon the Chinese doctrine of "the Seven Grounds of Divorce" (七去), which are (1) sterility, (2) lewdness, (3) disobedience to father-in-law, or mother-in-law, (4) loquacity, (5) larceny, (6) jealousy, and (7) bad disease.

These grounds were adopted in the "house law" (koryō) of the Taihō Code. But it must be observed that these grounds were *not limitative*, as in the case of modern legislation. They are only mentioned as *just grounds for abandoning a wife*, or in some cases, such as barrenness, adultery, or hereditary disease, as a *moral obligation* which a husband owes to his ancestor to abandon the wife, because the object of marriage was the perpetuation of ancestor-worship, and barrenness may cause the failure of heir, adultery the confusion, and hereditary disease the pollution, of ancestral blood. (See my work on *Ancestor-Worship and Japanese Law.*) Practically, a wife could be divorced at the pleasure of her husband, under any slight or flimsy pretext, the most usual being that "She does not conform to the usage of the family." It must be further observed that divorce during this period meant only the abandonment of the wife on the part of the husband. The wife had no legal right to demand divorce from her husband on any ground. Divorce, therefore, was not a bilateral, nor even a reciprocal, act. It was a *unilateral act of the husband.* To bring an action against the husband or to give information of a crime against him was itself considered a grave offense; and so a wife could not demand divorce in the court of law. Divorce was the privilege of the husband only, as in the Mosaic and other primitive laws.

But this state of things has changed since the Japanese law passed from the Chinese and entered the European family of laws. In the sixth year of Meiji (1873) the following law (no. 162) was enacted, which for the first time allowed the wife to bring an action of divorce against the husband: "Whereas it has frequently happened that a wife asked divorce from her husband on account of unavoidable circumstances, to which the latter unreasonably withheld his consent for many years, thereby causing her to lose the opportunity of second marriage, and whereas this is an injury to her right of freedom, it shall be henceforth allowed to the wife to bring an action against her husband, with the assistance of her father, brother, or other relative." This law may be considered as a revolution in the legal position of woman. The new Civil Code went a step farther and placed husband and wife on an equal footing in this respect. According to the Code *two kinds of divorce* are recognized, *consensual* and *judicial*, the former being effected by arrangement of parties, while the latter is granted by a court of law on several grounds specified in art. 813 of the Code. The grounds for judicial divorce include, *inter alia*, bigamy, adultery, sentence for an offense of grave nature, such cruel treatment or gross insult as make living together unbearable, desertion with evil intent, cruel treatment or gross insult of or by lineal ascendant, uncertainty, for a period of three years or more, whether the consort is alive or dead. Con-

sensual divorce, requiring the *consent of both parties*, is a bilateral act, whereas divorce during the second period was a *unilateral act*, which took place at the will of the husband, who gave her a "letter of divorce" formulated, as a custom, in three lines and a half "mikudari-han," stating that he gave her a dismissal, and nothing should henceforth stand in the way of her marrying again. As to the judicial divorce, either party to marriage can claim divorce from the other, if any of the grounds specified by law exists, so that husband and wife are now placed on an equal footing in this respect.

It will appear, from the foregoing rough sketch of the three periods in the history of the law relating to the position of woman, that during the first period, while Shintoism was the only form of worship, woman held a higher place than in the second period, when Confucianism, combined with Buddhism and feudalism, held down woman in a state of subjection; while in the third era a great revolution has been made in the position of women, and equality with men, as far as their private rights are concerned, is vouchsafed to them under the new Civil Code.

X. *The Status of Foreigners*

The possible forms which the law of any country relating to the position of foreigners may assume, or the possible stages through which it may pass, may be arranged, by the broad generalization of comparative jurisprudence, under the *four* following heads:

(1) Laws based upon the Principle of Enmity.

The laws of almost all barbarous peoples are based upon the principle that all foreigners are enemies, and consequently have no rights whatever. Even after they cease to regard foreigners as enemies, they view their own laws as exclusively national; that is to say, they are applicable only to their own countrymen. Foreigners are therefore outlaws, and are placed outside the protection of the law.

(2) Laws based upon the Principle of Inferiority.

With the advance of civilization, especially with the progress of commerce, foreigners are no longer regarded as enemies, but from disdain for foreigners, or from national egoism, they are placed in inferior position as regards the enjoyment of their private rights. Sometimes the enjoyment of many rights is totally denied them, or sometimes capricious limitations are placed upon their legal capacities. In this stage foreigners enjoy private rights, but in a limited degree only.

(3) Laws based upon the Principle of Reciprocity.

Some countries make the condition of foreigners dependent upon the treatment which their own people receive in other countries, and allow foreigners the enjoyment of their rights only so far as the

countries of those foreigners allow their own people the same rights. This principle of reciprocity is adopted in France (Code Civil, art. 11), Austria (Das allg. buergerl, Gesetzbuch, § 33), Sweden, Norway, Servia, and other countries.

(4) Laws based upon the Principle of Equality.

This is the most liberal and most advanced system of law relating to the legal condition of foreigners. Beginning in 1827 with the Dutch Civil Code, and followed by the Italian Civil Code of 1865, it has now been adopted in the majority of European and American states. They recognize the principle of equality so far as the enjoyment and exercise of private rights are concerned, some few exceptions only being usually made on grounds of national policy, such as the prohibition or limitation of the ownership of land or ships, the right of fishery, the right of working mines, or engaging in the coasting-trade, and a few others.

Now in regard to the legal condition of foreigners in Japan, we may distinguish *three periods*, which nearly correspond to the first, second, and fourth stages above mentioned. The first period includes the time before the opening of the country to foreign intercourse, the second from that time until the new Civil Code came into operation, and the third from that time till the present day.

During the first period, which may be called the *Period of National Seclusion*, there was no intercourse with foreign countries. Foreigners were looked upon as barbarians or enemies. They could not come and reside in the country, except in a very few instances, and therefore they stood entirely outside the pale of the law.

The second period, which may be called the *Period of the Treaties*, begins from the date of the second visit of Commodore Perry in 1854 and the conclusion of the treaty of peace and amity by him, followed in 1858 by the first treaty of trade and commerce with the United States. Some ports were opened for foreign trade, and foreigners could come and reside within the limits of the treaty ports and engage in trade, business, or missionary work. But their rights depended upon the *treaties, not upon the law of the country.* They enjoyed the privilege of extra-territoriality; that is to say, they brought their own laws with them, and remained under the jurisdiction of their respective consuls.

In the third period, which may be called the *Period of the Code,* foreigners enjoy their rights under the *law,* and the treaties only provide for the guarantees or limitations of rights. The new Civil Code, at its commencement, proclaims the noble principle of the equality of foreigners and native subjects before the law. Art. 2 provides that "Foreigners enjoy private rights except in those cases where such enjoyment is prohibited by law, ordinance, or treaty." And as to foreign juridical persons, art. 36 provides that "The

existence of juridical persons other than states, administrative districts, and commercial companies, is not admitted. But foreign juridical persons recognized as such by law or treaty do not come under this rule.

"Foreign juridical persons recognized as such under the provision of the preceding paragraph have the same private rights as the same classes of juridical persons existing in Japan; but this does not apply to such rights as foreigners cannot enjoy, or so far as special provisions are made by law or treaty."

From the above provisions, it will be seen that the *new Civil Code made the equal enjoyment of rights a general rule,* and limitations and prohibitions exceptions. These limitations upon the foreigner's equal enjoyment of rights are not numerous, and do not differ greatly from those existing under the laws of many other modern states. Such restrictions are the ownership of land or Japanese ships, the right to work mines, to own shares in the Bank of Japan or the Yokohama Specie Bank, to become members of the Stock Exchange, to engage in the emigration business, to receive bounties for navigation or ship-building, and a few others. Otherwise foreigners are as free as the Japanese to engage in any commercial or industrial business, or to own shares in any Japanese companies. Even the restrictions above mentioned do not work so hard upon foreigners as it may at first appear, for although foreigners as individuals cannot own land, they may become members of any commercial company owning land or working mines. As individuals, they may have the right of superficies, which is the right to use another person's land for the purpose of enjoying the right of property in structures and trees thereon. Moreover, the Law no. 39 of 1901, a right *in rem* called "the right of perpetual lease," was created especially for the benefit of foreigners or foreign juridical persons, who had held land in the treaty ports under lease from the Japanese Government. These leases, which had been no more than rights *in personam,* were turned into rights *in rem,* and *the rules relating to ownership are applied to them.* So they are now practically the same as ownership; and as soon as they pass into the hands of Japanese subjects they are turned into ownership. Moreover, opinions in favor of allowing foreigners to own land are daily gaining strength, so that this restriction is quite likely to be removed ere long.

It will appear from the foregoing statement that the condition of foreigners has undergone a great revolution during the half century which has elapsed since the opening of the country. In the *first period,* foreigners had *no rights* whatever; in the *second period,* they enjoyed their private rights *under treaties;* but in the *third period,* that is, under the new Civil Code, they enjoy their private rights *under the law,* which recognizes the principle of *equality* as far as

private rights are concerned. Thus, in a comparatively short space of time, *Japanese law passed from the stage of Enmity to that of Equality* — a revolution, which in other countries has required many centuries to accomplish. The difference between the second stage, in which their enjoyment of rights depended upon treaties, and the third stage, in which their rights depend upon law, very clearly appears in the present condition of Russians in Japan. As the commercial treaties between Japan and Russia have come to an end by the outbreak of the war, if Russian subjects had enjoyed their rights only under the treaties, they would not be entitled to claim any protection from Japan, except as a matter of favor. But as their rights are now guaranteed by the provisions of the Code, Russian residents still remaining in Japan enjoy the protection of law, just as peacefully as the citizens of any friendly states. The Code assures them the equal enjoyment of private rights, whether the country to which they belong be in amicable relations with Japan or not. This difference is further illustrated by Imperial Ordinance no. 352 of 1899, which declared foreigners who are not citizens of any of the Treaty Powers to have equal freedom of residence and profession with the subjects of the Treaty Powers.

XI. *The House and Kinship*

It will be at once remarked by any one reading the new Civil Code that the Japanese family law, unlike that of Europe and America, rests upon the *double bases of House and Kinship.* The "house" or "iye," in the sense in which it is employed in the Japanese law, does not mean a household nor a dwelling-place, but a group of persons, bearing the same surname, and subject to the authority of its chief who is called "koshu" or house-head. The other members who are subject to the authority of the house-head are called "kazoku" or house-members. It is not necessary that a house should consist of a group of persons, for a house may exist even when there is only one person in it, in which case that person is still called "koshu" or house-head. The house-membership consists of those relatives of the house-head or his predecessors, or sometimes also of the relatives of house-members who are not related to the present or preceding house-heads by any tie of kinship, but who entered the house with the house-head's consent; such, for instance, as the relatives of the house-head's adopted son, or daughter-in-law. (Civil Code, arts. 732–745.) The persons who constitute the members of a house are defined by law, and a registry is kept, in each district, of persons who are in each house. The house-membership is constituted in accordance with the following rules:

(1) A child enters the house of its father.

(2) A child whose father is not known enters the house of its mother.

(3) A "shoshi" or natural-born child recognized by its father who is a house-member, or a natural-born child of a female member of a house, enters the house of its father or mother only when the house-head's consent is obtained.

(4) A wife enters the house of her husband, except when a female house-head contracts a marriage, in which case the husband enters the house of his wife.

(5) A relative of a house-head who is in another house or a relative of a house-member who has become such by adoption or marriage, enters the house, if the consent of the head, both of the house he is leaving and of the house he is entering, is obtained. A person who cannot enter any house, such as a child whose parents cannot be ascertained, establishes a new house, and becomes himself a house-head.

A house thus constituted is entered in the house-registry or "koseki" which is kept in every district thoughout the Empire.

Kinship, according to the Civil Code, arises from relationship by blood, by adoption, or by marriage, and exists

(1) Between relatives by blood within six degrees inclusive.

(2) Between husband and wife.

(3) Between relatives by marriage within three degrees inclusive. (Civil Code, art. 725.)

(4) Between an adopted child and adoptive parent and the latter's blood relatives, the same relationship exists, from the date of the adoption, as that between blood relatives. (Civil Code, art. 727.)

(5) Between step-parents and step-children, a wife and her husband's recognized child, the same relationship exists as that between parent and child.

Now a house may include persons who are not the kindred of the house-head, because it includes the kindred of the preceding house-head, or the kindred of a house-member who is not related to the present house-head; and may exclude even the nearest kindred, because, by adoption or marriage and other causes above mentioned, a man may enter another house, or return to the original house by the dissolution of the marriage or adoptive tie, or establish a new house, leaving his own parents or child in the original house. The *house, therefore, is wider than kinship on the one side, whilst it is narrower on the other.* Sir Henry Maine's description of the ancient family so well tallies with the present state of the house in Japanese law — except in one particular which shows the peculiarity of Japanese family law — that I cannot do better than quote his words in full:

"The family, then, is the type of an archaic society in all the modifications which it was capable of assuming; but the family here spoken of is not exactly the family as understood by a modern.

In order to reach the ancient conception, we must give to our modern ideas an important extension and an important limitation. We must look on the family as constantly enlarged by the absorption of strangers within its circle, and we must try to regard the fiction of adoption as so closely simulating the reality of kinship that neither law nor opinion makes the slightest difference between a real and an adoptive connection. On the other hand, the persons theoretically amalgamated into a family by their common descent are practically held together by common obedience to their highest living ascendant, the father, grandfather, or great-grandfather. The patriarchal authority of a chieftain is as necessary an ingredient in the notion of the family group as the fact (or assumed fact) of its having sprung from his loins; and hence we must understand that if there be any persons who, however truly included in the brotherhood by virtue of their blood relationship, have nevertheless *de facto* withdrawn themselves from the empire of its ruler, they are always, in the beginnings of law, considered as lost to the family. It is this patriarchal aggregate — the modern family thus cut down on one side and extended on the other — which meets us on the threshold of primitive jurisprudence." (Maine, *Ancient Law*, ch. v.)

Here I may conveniently compare the house in Japanese law with the family in Roman law, in order to show the characteristics of the former. It differs from the Roman family chiefly in the following points:

(1) The house is not a family group held together by "common obedience to the *highest living ascendant,*" as in the Roman family, but is a *legal entity originally founded on ancestor-worship.* Therefore, it would be nearer the truth to say that it is the *highest dead ascendant,* by the common obedience to whom a house is held together. The house-head is not necessarily the highest living ascendant, but is a person who *succeeds to the authority* of the highest ascendant. Sometimes, therefore, a son may be the house-head, and his father may be a house-member under his authority, as in the case of abdication of the house-headship, which I will explain presently. Or, sometimes, a nephew may be the house-head, and the uncle may be a house-member under him as will happen when a grandson succeeds to the grandfather by representation. Or again, there may be no relationship at all between the house-head and the house-member, as I have explained above.

(2) In consequence of the above difference, the Roman family dissolved at the *death* of each paterfamilias, and each of the next highest ascendants became in his turn *sui juris* and a paterfamilias, having all his descendants in his power. Thus, if the deceased paterfamilias had three sons, there would be

three families instead of one. But the Japanese house is never dissolved at the death or abdication of a house-head and is succeeded by one person, all other members remaining *alieni juris* as before.

(3) According to the present Japanese law, *a woman may become a house-head*, and if she marries, she may continue to be the house-head and have her husband as a house-member under her power, provided such intention is expressed at the time of the marriage. (Civil Code, art. 736.) Under Roman law, however, a woman could never exercise authority even over her children.

(4) According to Roman law, when a woman married, she always entered the husband's family and passed into the power of another; but according to Japanese law the *husband enters the house of his wife* in case of the marriage of a female house-head, and also in case of the adoption of a son-in-law or "muko-yoshi," which I will explain later on; so that the famous maxim of Roman law, "*Mulier est caput et finis familiae*," — a woman is the beginning and end of the family, — does not apply to Japanese.

(5) Patria potestas was among the Romans an institution of *private law*, and it is so with us at the present time. But before the Restoration, it was an institution of public law as well as of private law, as I will explain when I come to speak of the decay of the house-system.

XII. *House-headship and Parental Power*

From the nature of the double bases of the Japanese family law it follows that *a person may have two capacities*, one as a member of the legal house, and the other as a member of the wider group of kindred. Thus, a person may be a house-head or a house-member, and at the same time he may be a son. In such cases, if he is the son of a house-head, he is placed under the house-head's power and under the parental power of the same person; if he is a son of a house-member who is himself under the power of the house-head, he is under the power of two persons, the house-head and the father. But if the house-head is a minor, and his father or mother is a house-member, the former is under the parental power of the latter, while the latter is subject to the authority of the former. In such cases conflict or inconvenience which may arise from mutual subjection to one another is avoided by the provision of art. 895 of the Civil Code, according to which the parent exercises the house-head's power on behalf of the minor house-head.

Of the two bases of the Japanese family law, the house and the kindred, *more weight is always laid on the former than on the latter*, except in the two instances of the duties of support and maintenance

and the succession to the property of house-members, both of which are new institutions introduced by the Code and are not bound by the limit of the house. In most other cases, the house takes precedence of the kindred, and a man's rights and duties, capacities and incapacities are usually determined by his position as a member of the house, and not by his position as a member of the kindred. *Parental power* which is based on the conception of kinship *is limited by the conception of the house,* and is recognized only so far as the parent and child are in the same house. So if a son is not in the same house with his father or mother, he does not stand under the paternal power of either. The consent of the house-head is always necessary for the marriage, adoption, divorce, or the dissolution of adoption of the house-member, but the consent of parents is only required *when the offspring is in the same house with them.*

Here again appears the difference between the Roman and Japanese family laws. The former recognizes only one authority of the head of the family, in the *patria potestas* of the highest male ascendant and merges the parental power of the members of the family in that of the paterfamilias, while the Japanese law recognizes parental authority of the house-member side by side with the authority of the house-head. The authority of the house-head includes the right of consent above referred to, right of determining the residence of house-members, right of expelling them from the house or forbidding their return to it on certain grounds specified by law, and the right of succeeding to the house-members' property in default of other heirs. The parental power includes the custody and education of children who are minors, right of correction, right of determining their place of abode, business or profession, of managing their property, or performing several legal acts on their behalf, subject in some cases to the approval of a family council. Most of the rights falling under the parental power *were formerly included in the house-head's power,* but the new Civil Code recognized the authority of parent and transferred them to the parental power, and greatly curtailed that of the house-head, only leaving those rights to him which are necessary to the preservation and proper management of the house. This recognition by the Civil Code of the parental power beside the authority of the house-head shows the transient state of Japanese society and is one of the points regarding which the framers of the new code took pains to adjust the laws to the progressive tendencies of the society. Formerly, there was only one authority recognized by Japanese law, as in the case of Roman law — that of the house-head. But the new Civil Code took a decided step and recognized the parental power, besides the house-headship, due deference being paid to the long-existing custom among the people, by not going so far as to extend that recognition

to the parents who belong to a different house from that of the child. The tendency of the laws of a progressive society must be the *gradual recognition of natural relationship in place of artificial connections;* and the process of evolution in this branch of law is *from house to kinship.* The reform made by the new Civil Code may be regarded as the first step in that direction.

XIII. *Relationships*

The method of determining the degrees of relationship according to the new Civil Code is the same as that adopted in most countries of Europe and America, belonging to the system of Roman law; that is, by reckoning the number of generations which intervene between two persons, either directly when they are lineal relatives, or through a common ancestor, when they are collaterals. This system of determining the degrees of relationship by the distance of consanguinity is the most natural one and is, for that reason, adopted from Western jurisprudence by the framers of the Code. But previous to the adoption of the Code, while Japanese law still belonged to the family of Chinese law, relationship was determined in a different way. The basis of the new system is *the distance of blood relationship* between relatives, but the old law rested on the *double bases of blood relationship and family rank;* that is to say, the degree of relationship was determined not only by the distance of blood relationship, real or fictitious, but also by the consideration of *superiority* or *inferiority* of their relative positions in the family. In "the ceremony law" of the Taihō Code (701 A. D.), kindred are divided into the following five ranks or "Go-tō-shin."

(1) The relatives of First Rank are: father and mother, adoptive father and adoptive mother, husband, son, and daughter.

(2) The relatives of the Second Rank are: grandfather and grandmother, "tekibo" (or wife of the father of a concubine's child), step-mother, uncle and aunt, brothers and sisters, husband's parents, wife and concubine, brother's child, grandson and granddaughter, and son's wife.

(3) The relatives of the Third Rank are: great-grandfather and great-grandmother, uncle's wife, husband's nephew, cousin, brother and sister by half-blood on father's side, husband's grandfather and grandmother, husband's uncle and aunt, wife of nephew, step-father, and child of husband by his former wife or concubine, provided the child is living in the same house.

(4) The relatives of the Fourth Rank are: great-great-grandfather and great-great-grandmother, grandfather's brother and sister, father's cousin, husband's brother and sister, brother's wife and concubine, second cousin, grandfather and grandmother on mother's side, uncle and aunt on mother's side,

brother's grandchild, cousin german's child, sister's child, great-grandchild, grandson's wife and concubine, and child of wife's or concubine's former consort.

(5) The relatives of the Fifth Rank are: parents of wife or concubine, aunt's child, cousin on mother's side, great-great-grandchild, grandchild by a daughter who entered another house by marriage, and son-in-law.

The above table will show that the degree of relationship was greatly modified by the consideration of rank in the family; so that those who stand in the same rank are not always related in an equal degree, when measured only with reference to the distance of consanguinity. It will be seen that *precedence is generally given to father's and husband's relatives, and to those who are in the same house, in preference to mother's and wife's relatives and to those who are in another house.* Thus, uncle and aunt on the father's side stand in the Second Rank, while those on the mother's side stand in the Fourth. Husband is the relative of the First Rank to wife, but the wife is the relative of the Second Rank to the husband. Husband's parents are in the Second Rank, while wife's parents are in the Fifth. Nephew and niece by brother are in the Second Rank, while those by sister are in the Fourth. Grandchild by son is in the Second, while grandchild by daughter is in the Fifth Rank, because the latter is in another house on account of marriage.

The law also made distinction between "sonzoku" or "superior kin" and "hizoku" or "inferior kin." The former includes all relatives, lineal and collateral, who stand above any person in the same lateral line of the table of consanguinity; such as father, uncle, father's cousin, grandfather, etc., while the latter includes those who stand in the lateral lines below him, such as son, nephew, cousin's child, grandson, etc.

This system of classifying relatives into five ranks was derived from the *Chinese law of mourning.* From ancient times down to the present day, Chinese law has been very strict as to mourning, because it was considered as the highest duty of a man to show respect and love toward the departed soul of his relative by that act; and the moral as well as the legal code prescribed even the "Mourning of Three Years" to the dutiful son. Chinese codes abound in minute regulations as to the mourning-dress, the duration of the time of mourning, and the conduct of mourners. The *mourning-dress is divided into five classes,* and the duration of the period of mourning is fixed by the class of the mourning-dress which the mourner ought to wear. The mourning-dress is coarser in material and make as the person mourned for stands nearer and higher in the family position to the mourner, — the first class, which is worn for parents, husband, and husband's parents, being the coarsest.

The first-class mourning-dress is worn for three years, the second for two years, the third for nine months, the fourth for five months, and the fifth for three months. Relatives are classified *according to the five classes of mourning-dresses* which are worn for them. Thus, for instance, father and mother belong to the relatives of the first-class mourning-dress; grandparents to the second class; cousins to the third; great-uncles and aunts to the fourth; and wife's parents to the fifth. This *classification of relatives according to the five classes of mourning-dresses very nearly corresponds to the five ranks mentioned in the Taihō Code*, except with respect to great-grandparents, who belong to the Third and Fourth Rank respectively according to the Taihō Code, but who are placed according to Chinese law in the second class. Besides, this classification which is made in the ceremonial law of the Chinese codes finds its place in the "ceremony law" or "Gi-sei-ryō" of the Taihō Code, instead of the "house law," where one would naturally expect to find it. So there is little room for doubt that the above-mentioned *Japanese classification of the relatives into the "five ranks" had its origin in the Chinese law of mourning-dress.*

During the Tokugawa Shogunate the study of the Chinese classics was greatly encouraged, and in 1638 the famous "mourning-law" (服忌令) was made, which has since then been amended several times and the classification of the "five ranks" went practically into disuse, until it was revived by the Criminal Code of 1870, which struck off concubines from the Third, Fourth, and Fifth ranks, and made a few other unimportant alterations. But with the publication of the present Criminal Code in 1882, it was abolished, and was replaced sixteen years later by the present system of reckoning relationship adopted in the new Civil Code. In this respect, too, Japanese law has passed from the Chinese to the European family of law.

XIV. *The Law of Personal Registration and the Civil Code*

As the house in the Japanese family law is narrower, in one respect, than kindred, and may exclude even the nearest relatives by blood, and wider, in another respect, and may include strangers, there is no logical test to determine the sphere of persons constituting the house other than their common subjection to the authority of one man, the house-head. Some other *external legal evidence* is required, therefore, for determining the constituents of a particular house. Such evidence is supplied by the *register* which is kept in every district throughout the Empire. As a person's birth, marriage, adoption, guardianship, death, succession, entrance to or separation from a house, acquisition or loss of nationality, and every other change of man's status is recorded in the register, the law relating

to registration forms a supplementary law to the Civil Code, and the present law was promulgated and put into force on the same day as the Code. As the register is the record of man's legal position in society, the development of society is often reflected in the law of registration. *Three stages* may be distinguished in the history of the law of personal registration in Japan; (1) the *epoch of clan-registration;* (2) the *epoch of house-registration;* and (3 the *epoch of status-registration.* These epochs show the changes in the units of state and correspond to the three stages in the process of social disintegration.

In the early days of Japanese history, it was not the individual nor the family that formed the unit of state. The state only took cognizance of *clans* and the government of families and individuals in each clan was left to the chief of the clan or "uji-no-kami," who was usually the eldest male descendant of an eponymous ancestor. He was honored and obeyed by clansmen as the representative of their common ancestor. He was the head of their worship, their leader in time of war, and their governor in time of peace. There were great clans or "ō-uji" and small clans or "ko-uji," the latter being included in the former. Clansmen of the small clan were governed by their chief, who was himself subject to the chief of the great clan. The Emperor was the supreme authority over them, and all the laws and proclamations of the Imperial Government were transmitted to the "uji-no-kami" of the great clans, who in turn transmitted them to the "uji-no-kami" of the small clans. Thus each clan was a body founded on community of blood and worship and *formed an administrative division of the country,* corresponding to the present administrative divisions, such as provinces, cities, towns, districts, and villages.

After the introduction of Chinese civilization and the Reform of the Taika Era (645 A. D.), in spite of the fact that the clan system of government continued for a long time afterward, the basis of the administrative division of the country gradually changed from a *personal* to a *territorial system* and provinces and districts took the place of clans.

In those early days of clan government, it was of the utmost importance that each man's clan-name should be kept sacred. As only those who belonged to certain clans could fill high official positions, or join the Imperial body-guard, and as several other privileges were enjoyed by particular clans, attempts were often made by clansmen to forsake their original clans and surreptitiously adopt the names of other and more influential clans. In order to put a stop to these abuses, the "ordeal of hot water" or "kugadachi" was resorted to, which consisted in plunging the hand into hot water before the temple of a god. It was claimed that those who assumed

false clan-names would suffer injury, while the innocent would escape unhurt. Afterward, in the year 815 A.D., a "Register of Clan-names" or "Seishi-roku" was compiled, a part of which is still in existence to-day. This register consisted of 30 volumes and contained 1182 clan-names.

The introduction of the house-register or "ko-seki" dates back as far as the first year of the Taika Era. But it owes its origin to the adoption of Chinese institutions, and although its introduction was earlier in date than the final compilation of the register of clan-names, its historical order must come after that of the clan-registry, for the system of house-registry has continued from that remote period down to the present time.

It was only in the year of the publication of the new Civil Code (1898) that our law of registration began to enter upon the third stage of its development. The present law, which was promulgated at the same time as the Civil Code, and which replaced the previous law of 1871, still retains the name of "Ko-seki Hō" or the "Law of House-registration"; but *the character of the law has undergone a change*, necessitated by the progress of the social condition of the country, for it provides for the *registration of individual status or "mibuu-tōki" as well as of house-registration.*

It is sometimes asserted that the family was the original unit of the state, and that an aggregation of families formed a clan. But *this view seems to reverse the real order of development.* The clan grew out of the expansion of a family, and separate households grew up within the clan by the increase of clansmen. It was their common worship and common clan-name which united them to a group. So it was the clan which was first recognized by the state and formed its unit. The family or house was included in the clan and did not yet possess separate existence in the eyes of the law. It *was only by the gradual disintegration of the clan and the growth of the central power of the state that the family or house came to the fore, and began to form the unit of the state. Thus the constituent elements of each society become smaller and smaller, until they divide themselves into atoms or individuals.*

XV. *Adoption*

The importance of the fiction of adoption to primitive society has been illustrated by Sir Henry Maine in many places. In one passage he says, "Without the fiction of adoption which permits the family tie to be artificially created, it is difficult to understand how society would ever have escaped from its swaddling-clothes, and taken its first step toward civilization." (*Ancient Law*, ch. ii.) Its importance in India and also at Rome and Athens is well known among students of historical and comparative jurisprudence. But

in modern systems of law adoption no longer occupies the position of importance which it held in archaic societies. It still survives in most of the countries which have received Roman law, but with several restrictions as to its effects, which make it in no way resemble that assumption of real kinship which characterized the ancient form of adoption. To the English family of law it is totally unknown as a legal institution.

But in Japan adoption may be regarded as the corner-stone of family law. Without it the continuity of the house, upon which rests the perpetuation of ancestor-worship, cannot be maintained. The practice of adoption has been so common and universal among the people, from ancient time down to the present day, that Professor Chamberlain writes: "It is strange, but true, that you may often go into a Japanese family and find half-a-dozen persons calling each other parent and child, brother and sister, uncle and nephew, and yet being really either no blood relations at all, or else relations in quite different degrees from those conventionally assumed."

Adoption in different systems of law *may be classified with regard to its object, under the following four heads:*

(1) Adoption for the purpose of perpetuating the family *sacra.*
(2) Adoption for the purpose of obtaining a *successor to house-headship.*
(3) Adoption for the purpose of obtaining a *successor to property.*
(4) Adoption for *charitable purposes, or for consolation in case of childless marriage.*

The historical order of the development, or rather the decay, of the law of adoption is usually as indicated above. I will proceed to explain them in order.

(1) Adoption for the purpose of perpetuating family *sacra.*

Death without an heir to perpetuate the worship of ancestors was considered to be the greatest act of impiety which a descendant could commit. So in the case of the failure of male issue, it was the *bounden duty* of a house-head to acquire a son by means of adoption. Adoption was, as Fustel de Coulanges says, "a final resource to escape the much dreaded misfortune of the extinction of a worship."

Many provisions of our ancient Code show that the object of adoption was the perpetuation of the *sacra.* The house law of the Taihō Code provides that "A person *having no child* may adopt one from among his relatives *within the Fourth Rank of Kinship,* whose age does not exceed that which might have been attained by a son of the adopter's own body." According to some commentators on the Taihō Code, "having no child" here means that the adoptive father should have reached the age of *sixty* years, or the adoptive mother *fifty* years, without having *male issue.* The reason for *limiting the age of the adopter* was, that as long as any hope of having a male

issue of blood, that is, the direct descendant of his ancestors, existed, the head of a house should not permit a person of more distant relationship to become the successor to the *sacra*.

That the object of adoption was the perpetuation of ancestor-worship may also be inferred from the old strict rule that only a *kinsman could be adopted as a son*. The Taihō Code did not permit adoption of kindred beyond the *Fourth Rank*, as I have said above. From the remains of the Taihō Criminal Code which have come down to us, we know that a punishment of one year's penal servitude was inflicted upon one who adopted a son from a different clan. This prohibition against the adoption of a person not related by blood derives its origin from the belief, which generally exists where the practice of ancestor-worship prevails, that "*the spirit does not receive the offerings of strangers.*"

Another requirement of adoption, which is to be found in the laws of many countries, is the absolute *failure of male issue*. The house law of the Taihō Code allowed adoption only in case a man had no son. The object of this rule is clear from what I have said above. A remoter relative should not be admitted where there is a nearer descendant to make offerings.

There is one peculiar form of adoption called "muko-yōshi" or "adoption of son-in-law," the origin of which must be attributed to the same cause. As I have said above, the law considered a man *childless*, even though he had a daughter. Males were the only continuators of worship. Those who had daughters only were therefore obliged to adopt a son; but it was necessary for the blood of the ancestor to be, if possible, *continued in the house*. In such cases, a house-head selects a person who is fit to be his daughter's husband and adopts him as a son. If adoption and marriage take place at the same time, it is called "muko-yōshi" or "adoption of son-in-law." The same object may also be attained by the subsequent marriage of the adopted son with the daughter of the adopter, for the collateral relationship of brother and sister *by adoption* is no bar to their marriage.

(2) Adoption for the purpose of obtaining a successor to house-headship.

As the house is the seat of ancestor-worship and the house-head is the continuator of the *sacra*, this kind of adoption cannot be regarded as differing from that above mentioned. But with the development of the house-system the authority of the head of a house begins to be regarded as a distinct object of inheritance by itself, and the family *sacra* only as one of the duties incumbent upon the house-head. Especially was this the case when hereditary office, profession, or fief belonged to house-headship. In Japan this stage was reached when the feudal system was established, and daimios

and samurais had their fiefs belonging to their houses. Under the feudal régime *the nature of military service required that males only should become house-heads.* Hence the failure of male issue was also the cause of adoption. It was necessary to make provision against the contingency of a house becoming extinct and the fief being escheated by failure of heirs. As professions were at that time usually hereditary and were considered as belonging to certain houses, adoption was frequently resorted to, in order to keep the profession in the house. Physicians, artists, masters of fencing, riding, archery, professors of classics and the like, often adopted, by special permission, those qualified to succeed them in the profession, even though they may have had sons of their own, the latter, however, being unworthy of their fathers. This kind of adoption was called "geidō-yōshi" or "arts-adoption."

It has just been remarked that the Taihō Code fixed the lower limit of the adopter's age at sixty for the father and fifty for the mother. But this rule took another form under the law of the Tokugawa Government. The limit of the age was fixed as low as *seventeen.* A house-head above that age, or even by special permission under that age, who had no male issue was allowed to adopt a son, in order to prevent the extinction of a house by his sudden death, causing the escheat of his feudal property. A person between the ages of seventeen and fifty years could even adopt a son on his death-bed, which kind of adoption was called "kiu-yōshi" or "quick adoption." But after the age of fifty, "quick adoption" was not allowed, so that he was obliged to provide for the succession to the house-headship early in life, even if he still had the hope of having male issue. The Taihō Code allowed adoption only in old age, because it was desirable that ancestor-worship should be continued by the nearest blood descendants. The Tokugawa Law allowed and encouraged adoption by young people, and attached severe penalties to the neglect of the precaution to provide for succession early in life, in order to avoid the chance of a house becoming extinct.

(3) Adoption for the purpose of obtaining a successor to property.

Next comes the time when the notions of succession to *sacra* and house-headship gradually recede into the background and the notion of property succession comes to the fore. This stage is first reached in the new Civil Code. With the restoration of the Imperial power and the abolition of feudalism, house-headship has lost more than half of its former importance. Fiefs were abolished; offices and professions ceased to be hereditary privileges of house-heads; and so far as public law is concerned, house-members now stand on an equal footing with house-heads. What remains of the rights and privileges attaching to house-heads is enjoyed within the sphere of private law. Of these the right of enjoying house-property

is the most important, at least, so far as material interests are concerned. Besides, house-members are now allowed to have independent property of their own, as I have already explained, and they may adopt just in the same way as house-heads, provided the consent of the latter is obtained. (Civil Code, art. 750.) During the feudal period, only house-heads were allowed to adopt, because the object of adoption was the continuation of house-headship; but now *adoption is no longer the exclusive privilege of house-heads* because its object is not limited to obtaining a successor to house-headship. Wills, although not quite unknown to the old Japanese law, were very rare in practice and their place was taken by adoption. *What is done in Europe and America by will is done in Japan by adoption.* Instead of giving away property to another person by will, which becomes effective after death, a Japanese takes another person into his house by adoption during his lifetime and makes the latter the expectant successor to his property.

(4) Adoption for consolation in case of childless marriage.

This is the only kind of adoption which has no connection with the house-system, and marks the last stage in the history of the law of adoption. In Occidental systems of jurisprudence, will has taken the place of adoption, and the principal ground on which this institution is still retained is for consolation in case of childless marriage. Although the adopted child usually obtains the right of succeeding to the adopter's property, this is the effect of adoption and cannot be regarded as the ground for allowing adoption. Consolation in the case of a childless marriage constitutes the principal motive to this act, and therefore most systems allow adoption only when the adopter has no children of his own and is of such an age as to preclude reasonable expectation of any being born to him. In Japan also adoption often takes place from the same motive, but it cannot be regarded as a legal ground, because the new Civil Code does not limit adoption to the case of childless marriage. The Japanese law of adoption is now in a transient state, and *is passing from the second to the third stage of its development, but has not yet entered the fourth.*

XVI. *Succession in General—The Evolution of the Law of Succession*

I think it may be laid down as a universal rule of the evolution of the law of succession that it passes through *three stages of evolution;* the *first stage is that of the succession to sacra,* the *second that of the succession to status,* and the *third that of the succession to property.* Each stage of development, however, did not form a distinct period in itself, but the later was gradually evolved out of the earlier by the process of differentiation. In ancient times the duty of performing and continuing the *worship* rested on the head of a house, and the

property of a house belonged exclusively to him. He exercised *authority* over the members of his house, because he was the *continuator of the ancestral sacra*, and in one sense the representative of the ancestor. He owned his property, because it was left by the ancestor, and the *authority and property of a house-head rested on the worship of ancestors*. In those times continuation of house-worship formed the sole object of inheritance. But in the course of time the authority of the house-head, which at first comprehended both power over the members of the house and rights over house-property, came to be considered by itself in law. Afterwards the two constituent elements of the authority of the house-head gradually began to be separately considered, until at last *property came to be regarded as a distinct object of inheritance.*

There are perhaps few systems of law which can illustrate the above proposition and indicate the process of gradual development so clearly as the Japanese law of succession to the headship of a house. In the succession law, "keishi-ryō," of the Taihō Code (701 A. D.) there is a provision that if a presumptive heir of a noble family "is not fit to succeed to the important duty" owing to the committal of crime or to disease, he may be disinherited and another presumptive heir may be substituted. The official commentary on this code "Ryō-nō-gigé" says "*to succeed to the important duty*" means "to succeed a father and *inherit the sacra*, for the matter of worship is the most important." It appears that at this time the continuation of ancestor-worship was the principal object of succession. Since the Middle Ages the word "*katoku sōzoku*" or "the succession to house-authority" has been used for succession, and in the feudal period, especially during the Tokugawa Shogunate, succession represented the continuity of the *status of house-headship*. In later times "katoku," which literally means "*house-authority*," was very frequently used for "*house-property*," which formed the object of inheritance, just as the word "familia" in Roman law was often used to designate property. This transition of the use of the word "katoku" indicates that the law of succession was gradually passing from the second to the third stage referred to.

The present law of succession, contained in book v of the Civil Code, shows that *Japanese law is rapidly passing from the second to the third stage above mentioned, without losing its original trait of the succession to sacra.* The new Civil Code recognizes *two kinds* of succession,—*succession to house-headship*, or "katoku sōzoku," and *succession to property*, or "isan sōzoku." But there are many rules still remaining which show that the foundation of the succession to the house-headship is the necessity of continuing the worship of ancestors. Article 987 contains the following provision:

"The ownership of the records of the genealogy of the house, the

article used for house-worship, and the family tombs constitutes the special right of succession to the headship of a house."

This important provision means that those things which are specified therein form the special objects of inheritance. They cannot be bequeathed away, nor can they be seized for debts.

Though the house is no longer a corporation, as was formerly the case, it is still a legal entity whose continuance is assured by law, and does not break up at the death of each house-head. So there can be only one heir to its headship, and the new Civil Code recognizes many kinds of heirs to house-headship in order to provide against the contingency of the failure of the heir. They are: (1) "the Legal Heir"; (2) "the Appointed Heir"; (3) "the Chosen Heir"; and (4) "the Ascendant Heir." The legal heir, who comes first in the order of succession, *is the lineal descendant of a house-head, who is at the same time a member of his house.* Among lineal descendants, nearest kinsmen are preferred to more remote, males to females, and legitimate children to illegitimate, seniors in age being always accorded priority when they are equal in other respects. (Civil Code, art. 970.) Modern writers on law usually give as a reason for the preference of nearer to remoter kinsmen that the order of succession is determined by the *degree of affection* which the deceased is presumed to have entertained toward his relatives, and also by the presumed intention of the person who dies intestate as to the disposition of his property. For the preference of males over females *feudal reasons* are often given. These reasons also form the principal basis of our present law. But the reasons for the *existence* of the rule and its *origin* are not always the same. Originally, *the nearest in blood to the ancestors worshiped* and their male descendants were preferred, because they were considered to be the fittest persons to offer sacrifices to the spirits of ancestors.

The legal heir is *heres necessarius* and is not allowed to renounce the succession, whilst other kinds of heirs are at liberty to accept or renounce the inheritance, or to accept it with the reservation that they shall not be liable for the debts of their predecessors. It is the bounden duty of a descendant who is the legal heir to accept the inheritance and continue the *sacra* of the house.

The house-head cannot bequeath away from him more than one half of the property (Civil Code, art. 1130), nor can he disinherit him, unless there exist one of the grounds mentioned in article 975 of the Civil Code. The causes especially mentioned there are:

(1) Ill treatment or gross insult to the house-head, (2) unfitness for house-headship on account of bodily or mental infirmities, (3) sentence to punishment for an offense of a nature disgraceful to the name of the house, and (4) interdiction as a spendthrift. These grounds relate directly to the house-head's authority and indirectly

to ancestor-worship and the necessity of maintaining intact the reputation and property of the house.

In case there is no legal presumptive heir to a house-head, he may appoint an heir, either in his lifetime or by his will. (Civil Code, art. 979.)

If, at the time of the death of a house-head, there is neither a legal heir nor an appointed heir, the father of the deceased, or if there is no father, or if he is unable to express his intention, the mother, or if there are no parents, or both are unable to express their intention, the family council chooses an heir from among the members of the house according to the following order: (1) the surviving wife, if she is a "*house-daughter*"; (2) brothers; (3) sisters; (4) the surviving wife who *is not a house-daughter;* and finally (5) the lineal descendants of brothers and sisters. (Civil Code, art. 982.)

Now, in this also the desire for preserving the blood of ancestors will be seen from the order in which the heir is chosen. The surviving consort of the last house-head comes *first* in the order of succession, provided that she is a "*house-daughter*," but *fourth* if she is not the descendant in blood of an ancestor of the house.

If there is neither a legal nor appointed nor chosen heir, then the nearest lineal ascendant of the last house-head succeeds, males being always preferred to females between persons standing in the same degree of relationship. (Civil Code, art. 984.)

If there are no other heirs above mentioned, the family council must choose one from among other relatives of the last house-head or members of his house, house-heads of branch house or members of principal or branch house. If none of the persons above mentioned be existing or able to succeed, then as a last resort the family council may choose an heir from among other persons. (Civil Code, art. 985.)

From the foregoing enumeration of the various kinds of heirs, it will be seen that the law takes every precaution against the contingency of a house becoming extinct; for with the extinction of the house, the worship of its ancestors would come to an end.

XVII. *Property Succession — The Recognition of House-Member's Separate Property*

The second kind of succession, namely property succession, is a new institution introduced by the new Civil Code. According to the Code, *property succession includes only the succession to the property of a house-member on his death.*

Before the Restoration, a house was in a strict sense a corporation, and a house-member could not have separate property of his own. All he gained he gained for the house-head or rather the house; all

he possessed or enjoyed he possessed or enjoyed by the license of the house-head, not as of right. No question of succession to the property of house-members could therefore arise at that time. But the Restoration completely changed this state of things. It was one of the policies of the new Imperial Government to appoint its officials not, as before, on account of birth, but on account of personal merits, no distinction whatever being made as to whether they were house-heads or house-members. Formerly it was only the house-head that could hold public office. During the first years of the Imperial Government, statesmen and soldiers who had served in the cause of the Restoration were rewarded with life or perpetual annuities. But many of them were not house-heads; some were "inkyo" or house-members who had become such by abdicating house-headship; others were younger members of houses. Now, *these annuities and the salaries of civil and military officials, being given by the state for personal services or merits, could not be treated as house-property. Thus began the independent and separate property of house-members,* with the first great blow which the old family system received at the hand of the Imperial Government. It is interesting to note that this is exactly what happened in the beginning of the Roman Empire, when *castrense peculium* of *filiusfamilias* was recognized for military services, and three centuries afterward *quasi-castrense peculium* for civil services.

The issue of a law in 1872 which abolished the prohibition of the sale of land and *granted title-deeds to landowners,* the issue in the following year of the *government bonds* for public loans, and the *establishment of joint-stock companies and savings-banks* mark the next step in the development of the separate property of house-members. The courts of law began to recognize house-members' separate property in the title-deeds, bonds, stocks, debentures, or savings which they held in their own names, and thus *individual property began to grow up by the side of house-property.* But on the other hand, a law (no. 275) was passed in 1872 to the effect that the house-head should not be liable for the debts contracted by house-members, unless he became a surety to the contract.

Although the separate property of house-members was thus established, the rule of succession was not settled until the promulgation of the new Civil Code. As a rule the property left by a deceased house-member went to the house-head. But here again the Code took a decided step and gave the right of succession to the *nearest descendants equally, whether they were males or females or whether they were in the same house with the deceased or not,* the right of representation being always given to the children of the predeceased descendant. After descendants comes the consort; next in order, the lineal ascendant; and *as the last successor, the house-head.*

Other rules relating to this kind of succession do not differ much from those we find in Western countries.

By comparing the above-mentioned two kinds of succession, we shall notice that they present a remarkable contrast and indicate the transient stage in which the Japanese law of succession finds itself. The rules relating to succession to house-headship rest chiefly upon indigenous elements, while those relating to succession to property are based principally upon Western ideas.

XVIII. *Succession Inter Vivos*

Another characteristic of the Japanese succession law is the existence of succession *inter vivos*, side by side with succession *mortis causa*. The succession which arises during the lifetime of the person succeeded takes place only with reference to *succession to house-headship;* for house-headship may come to an end either by *a house-head's death or the loss of house-headship during his lifetime.* Succession *inter vivos* takes place in the following cases:

I. "Inkyo" or abdication of house-headship.
II. Loss of nationality by a house-head.
III. The marriage of a female house-head.
IV. The divorce of a husband who has married a female house-head.
V. When a house-head leaves the house in consequence of the invalidation of his marriage or adoption.

I will explain each of the causes of succession *inter vivos* in order.

I. "Inkyo" or abdication of house-headship.

House-headship is not a lifelong authority. It may be lost in several ways, the most usual of which is its abdication or "inkyo," which literally means "*living in retirement.*" The origin of this custom has been sometimes ascribed to Buddhism, but I have shown in a work especially devoted to this subject (*Inkyo-ron*, or *Treatise on Abdication*, 1891) that this institution was originally derived from China, and developed among us by the influence of Buddhism and feudalism. The abdication of house-headship may be classified with reference to its *causes* under the following *four heads;* namely, (1) Religious Abdication, (2) Political Abdication, (3) Judicial Abdication, and (4) Physiological Abdication.

(1) Religious abdication.

After the introduction of Buddhism the practice gradually grew up, among higher classes, of withdrawing from active life when any person attained "the age of retirement," which was *seventy* according to the Chinese Ritual Code, and closing his days in religious devotion as a hermit or priest. Our history abounds in instances where ministers of state tendered their

resignations for the purpose of devoting the rest of their lives to religious practice. As I have already said, house-headship was rather an institution of public law than of private law, and the *resignation of office usually brought with it the loss of house-headship.* In later times the middle and lower classes began to imitate the example set by the heads of noble families, until it has become a general custom among the people. Until recently it was a very common practice for retired persons to shave their heads, like Buddhist priests, in token of their having given up secular business and of having embraced the religious life. It was for this reason that the designation of "niudō-inkyo" or "priestly retirement" was employed for this kind of abdication.

This practice is very common among the Hindus where life is distributed into three periods; namely, the student, householder, and ascetic periods. Minute regulations as to the life of the ascetic are contained in Hindu law-books, especially in the sixth chapter of the Code of Manu. Entering into a monastery seems to have had the same effect as death in the early Germanic and English laws (Young's *Anglo-Saxon Family Law,* Co. Litt. 133, Blaxland's *Codex Legum Anglicanarum,* p. 217) and in the French law before the Revolution (Zachariae, *Franz. Civilrecht,* sec. 162), but since the abolition of civil death in modern legal systems succession *inter vivos* does not occur in European families of law.

(2) Political abdication.

From an early period of our history, it was very common for the upper and middle classes to resort to abdication for various political reasons. Sometimes it was made use of by unscrupulous ministers of state or influential servants of daimios to deprive masters of their power, and put other persons, perhaps puppets, in their places; sometimes, house-heads retired in order to shift responsibilities to other persons' shoulders and wield real power themselves, or pull strings from behind the curtain; or sometimes they gave up the worldly life and led the ascetic life out of political discontent or disappointment.

(3) Legal abdication.

I mean by *legal abdication* the compulsory loss of house-headship by way of punishment or atonement for a crime or other grave fault. Cases occurred very frequently during the feudal times, especially under the Tokugawa Shogunate, in which a house-head was sentenced or ordered to abdicate as a punishment for his offense. Particular names have been given to the kind of abdication, such as "zaikwa-inkyo," "or penal abdication"; or "chikkyo-inkyo," or "confinement abdication"; or "tsutsushimi-inkyo," or "reprimand abdication." House-heads

were also very often forced to abdicate by the resolution of family councils on account of their moral depravity, which made them unfit for the duties of house-headship. Even in the beginning of the present reign, this kind of abdication continued; and article 14 of the Criminal Code of 1873 provided that kwazoku and shizoku, or nobles and samurais who were guilty of crimes involving grave moral depravity, should be sentenced to the loss of house-headship, together with their privileges.

(4) Physiological abdication.

The decay of physical or mental power either on account of old age or ill health is the most common cause of abdication. Manu says: "When a householder sees his skin wrinkled, and his hair white, and the sons of his sons, then he may resort to the forest." (Manu, VI, 2.) As house-headship was an institution of *public law as well as of private law*, it involved not only power over the house-members, but also many duties toward the state, besides duties and responsibilities toward the house-members which were incumbent upon that position. So house-heads were often obliged to retire from the active duties of family life when their age or state of health made them unfit for that position. This was especially the case with the samurai class during the *feudal period, when physical power was especially necessary for the discharge of military duties.* It is for this reason that abdication came to be regarded as an important and necessary institution, and *laws relating to it made great progress under the military régime of feudalism.*

The rule with regard to the *age* at which a house-head was allowed to abdicate was *seventy* before the establishment of the feudal system, which was the age of retirement according to the Chinese Ceremonial Code (禮記). But *this age was lowered under feudalism* and *fifty* was fixed as the lowest limit of the age at which a house-head was allowed to abdicate without adducing any other reason. But since the abolition of feudalism and the establishment of the conscription system, which imposes military duty irrespective of a man's position in the house, there is no need to keep this low limit of age. *The new Code raised it again and fixed it at sixty;* so that there have been *three changes* as to the age of retirement, the first being seventy, the second fifty, and the third sixty.

According to the new Code, a house-head may abdicate when he has attained the age of sixty, but in case of a female house-head, she may abdicate irrespective of her age. (Civil Code, arts. 752, 755.) In all other cases the permission of a court of law is necessary. Such permission is given if a house-head is unable to continue the management of the house owing to one

of the following causes; namely, sickness, the necessity of succeeding as heir to the headship of the main branch of the family, or of resuscitating it, the desire to enter another house by marriage, or other unavoidable causes. (Civil Code, arts. 753, 784.) In both these cases there must always be an heir to succeed him in the headship of the house; for nobody but a person who has founded a new house may abolish it, as the abolition of a house would bring with it, in other cases, the extinction of the worship of the ancestors. (Civil Code, arts. 762, 763.)

II. Loss of nationality.

The house-system is a *national institution,* and foreigners not being considered as belonging to any house, the house-headship necessarily comes to an end when a house-head loses his nationality, by naturalization or other causes mentioned in the law of nationality (no. 66, 1899); just as a Roman *paterfamilias* lost his *patria potestas* on account of the loss of citizenship by undergoing *media capitis diminutio.*

III. The marriage of a female house-head.

According to article 736 of the Civil Code, if a female house-head marries, the husband enters the house of his wife, instead of the wife's entering the husband's house according to the usual rule, and at once becomes the house-head, unless the parties concerned expressed a contrary intention at the time of marriage. Thus succession *inter vivos* to the house-headship occurs in case of the marriage of a female house-head.

IV. The divorce of a husband who has married a female house-head.

As the husband entered the house and has become the house-head in consequence of the marriage, he leaves the house by divorce, and at the same time loses the house-headship. Thus divorce in this case becomes a cause of succession *inter vivos.*

V. Invalidation of marriage or adoption.

If a man who married a female house-head, or an adopted son or daughter has become a house-head, and the marriage or the adoption is invalidated for one of the causes mentioned in the Code, the husband or the adopted child leaves the house, and the house-headship is lost. In this case, as the invalidation has no retrospective effect, the preceding house-head, though alive, such as the wife or the abdicated adoptive father, does not recover the house-headship as if there had been no marriage or adoption, but the rules of succession apply just as in the case of death.

The above enumeration of the causes will show that succession *inter vivos,* which is not usually found in modern laws, occurs very frequently under the present Japanese law.

XIX. *Conclusion*

I hope I have been able to show, to some extent at least, that the new Japanese Civil Code furnishes valuable materials for students of historical and comparative jurisprudence. The codification was the result of the great political and social revolutions which took place within a comparatively short period. The Code embodies in itself archaic and modern elements on the one hand, and Eastern and Western elements on the other. Within the past thirty years Japanese law has passed from the Chinese family of law to the European family; the notion of right was introduced; woman's position was raised from a condition of total subjection to one of equality with man, so far as private rights are concerned; the status of foreigners advanced from the stage of enmity to that of equality with citizens; the family system was greatly modified; the separate property of house-members began to be recognized; and property succession has come to exist side by side with the succession of house-headship.

Comparing the new Japanese Civil Code with Western codes, we observe great similarity between them in the first three books relating to general provisions, real rights, and obligations respectively, but great difference in the last two, which relate to family and succession. Of the first three books, the law of obligations may be said to be entirely Occidental. That part of law may indeed be said to be in a sense cosmopolitan, the laws of different countries exhibiting a relatively small amount of variation in this regard. The law of obligations, therefore, has the greatest propagating capacity and is generally first received in other countries. Next comes the law relating to movables. But land is usually so bound up with the public policy and local conditions of a country that we usually find much divergence in the laws relating to immovables in different countries. The laws relating to succession and family, depending, as they do, upon the national character, religion, history, traditions, and customs, show the least capacity for assimilation. So the usual order of assimilation, or reception of foreign laws is, (1) law of obligation, (2) law of movables, (3) law of immovables, (4) law of succession and family.

I have not touched upon those parts of the Civil Code which relate to obligations and rights *in rem*, because the rules relating to these parts are mostly derived from Western jurisprudence and will present little that is novel to a European or American audience. I have confined my remarks, therefore, to those parts in which the indigenous element is usually most persistent. I have shown that even in these, we have made great reforms since the opening of the country to foreign intercourse. During the last thirty years we have

been trying to adopt from Western civilization whatever seemed to us best fitted for the progress of the country.

We now possess a Civil Code based upon the most advanced principles of Western jurisprudence. But the code is only a framework or skeleton of law. What supplies flesh, blood, and sinews to it is the integrity and learning of the Bench and the Bar and the law-abiding habit of the people. But above all, the fountain-head of legal improvement is legal science. Law is national or territorial, but the science of law is universal, and is not confined within the bounds of any state. We have profited in the past by the work of scientific jurists of the West, and we must look in the future to the mutual assistance and coöperation of the scientific brotherhood of the world.

THE LATEST ORGANIZATION OF POPULAR SUFFRAGE

BY ALFRED NERINCX

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EVEN a mere outline of the history of popular suffrage, as a study of comparative law and political institutions, could hardly be compressed into the short space of an hour. Moreover, the subject has been treated so often and so adequately by students of political science both in Europe and in America, that there is no necessity for taking it up again as a whole.

But there is one remarkable fact in that history, upon which I should like to dwell somewhat to-day, because it affords a striking contrast with the organization which I have undertaken to explain briefly before this Congress.

That fact is the general contradiction existing between the theory and practice of popular suffrage in all the forms of representative government where a very highly organized method of suffrage is not yet enforced, that is, almost everywhere.

Whether one considers the people who still retain the limited suffrage, after the English type, or the countries where universal suffrage obtains as in France and in the United States, it is remarkable that, whereas the law of the land grants to every individual voter the same political power in theory, yet, in fact, absolute equality is hardly to be found anywhere, either between citizens belonging to different constituencies, or between voters belonging to the same classes.

One country distributes parliamentary seats on the lines of ancient historical traditions, without the least regard for area or population. Another has followed political considerations absolutely irrespective of the equality of citizens. In another still, political ethics have allowed the parties or even the legislature to accomplish what constitutions seemed to forbid. As a rule rural districts have been better provided for than urban constituencies. The larger industrial communities with suspiciously radical tendencies remain generally deprived of part of the representation which, in theory at least, they ought to have. Numbers of citizens, even the majority of them in some parts of the United States, are being disfranchised by recent

constitutional amendments, in the very face, as it looks, of an express provision of the Federal Constitution.

Yet everywhere public opinion shows a wonderful leniency toward the politicians who manipulate the polls and falsify the results, before or after the contest. Most of the frauds are well known; the statutes hurl all sorts of punishments on the culprits, but very often they go scot free; sometimes even their devices receive the official indorsement of the unprincipled majority which has profited by them. Happy indeed are the countries where governmental pressure and administrative corruption are not yet allowed to exist upon those evils! What does that show?

It shows that, even when the law of the land most emphatically asserts the absolute equivalence of all citizens in politics, public opinion, on the contrary, instinctively feels, although it is sometimes loath to own it, that such a theory is utterly false, that it has no practical foundation, and that its literal application, far from being in any way desirable, would probably be most dangerous for the political balance of the country. Public opinion, passionately attached to political equality, because it mistakes it for a necessary consequence of individual liberty, has a clear sense, however, of its perils, and it tolerates, like necessary evils, the more or less clever devices, the more or less unfair tricks which may, to a certain extent, insure the general interest which such a theory must inevitably jeopardize.

However, there is one country which, on the occasion of her political reforms, has plainly sanctioned in her electoral legislation this evident truth; namely, that all men do not possess the same value from the political point of view.

That country is Belgium. And if I take it as my subject before this meeting, it is not merely out of patriotic pride, a feeling which would hardly deserve the consideration of an assembly of learned scientists, but it is because of the unique scientific interest which attaches itself to the political experiments which Belgium has just made within the last ten years, in the vanguard, I might say, of the peoples who have adopted the parliamentary system.

Belgium was the first country to attempt on a large scale reforms which had long been recommended by the masters of political science, and she accomplished them at a time when most of the statesmen, some even in Belgium, branded them as practically impossible and treated them as the pious dreams of mere theoretical scientists. Practical politicians will kindly allow me to remind this audience that the authors of those daring and successful reforms both belonged to an academical faculty.[1]

[1] The late Professor Alb. Nyssens, Member of Parliament and Minister of Labor, and Professor Jules van den Heuvel, Minister of Justice, both eminent members of the Faculty of Law of the University of Louvain.

These reforms are the organization of universal suffrage in the highest degree by those factors calculated to palliate in a large measure the greatest danger of popular contests; namely, the triumph of the boisterous elements and the radical tendencies of an active and audacious minority over the conservative feelings of a majority calm, timid, or careless.

Those three factors are plural suffrage, proportional representation, and compulsory voting.

I shall expound them briefly, without much detail, in order to spare some time for the supplemental questions which may arise in a discussion hereafter.

Plural suffrage means the attribution to every voter of an influence, a voting power, corresponding as exactly as possible to the value which every individual citizen represents for the political organization of the community, under the system of universal suffrage.

Whereas the voter of twenty-five years of age has a single vote, one supplementary vote is allotted to the head of a family at the age of thirty-five, provided he has settled his family in a certain degree of stability and comfort; a condition which appears when he pays a small house-tax, instead of merely renting a furnished room.

Another supplementary vote belongs to the owner of some property either of real property worth $400 (2000 francs) or of registered government bonds bringing an income of $20 (100 francs) a year. The very nature of such property clearly enhances the character, at the same time democratic and conservative, of that reform.

Finally another plural suffrage, in the shape of two additional votes, is granted to the holders of an academic degree and to the voters who, without holding such degree, occupy a station in life which implies that their education is equal to that which such degree avers.

Altogether, considering the voters as so many members of a general meeting of the shareholders of the great national concern, one may say that the Belgian suffrage law gives to each of them a voting power equal either to the assets which every one owns in the business, — in his capacity of citizen, of family man, or of property holder, — or to the value of the services which he may render by the enlightened vote of an educated man.

But in the opinion of its authors, the electoral reform of 1893 in Belgium was to be just as democratic as it was conservative. It coincided with a great extension of the suffrage, formerly strictly limited, and it would have been unworthy of the Belgian statesmen to take back on the one hand that which they were giving on the other; that is, of infinitely increasing the influence of the upper classes by drowning, as it were, the vote of the popular masses.

Therefore it was enacted that nobody should enjoy more than three votes, no matter how many titles he might have to claim supplementary votes. In that way is plural suffrage at the same time a wisely conservative and a truly democratic institution — conservative, because it strengthens the influence of the more balanced, the more useful, and the more respectable elements of society in any country; democratic, since the moderation of its requirements allows to any man who loves foresight and economy to acquire at a comparatively early period of his life the fullness of the voting power recognized to any one in the community.

The next reform introduced into the Belgian organization of suffrage, quite recently, in 1899–1900, is a little more intricate: it is the proportional representation of parties, and even more accurately speaking, of the majority and of the principal minorities of the body politic.

It combines two principles, generally admitted by the legal theory of most countries, but which we find carried out in Belgium as nowhere else in a systematic way, mathematically and with the strictest accuracy.

The first of these principles is the absolute equivalence of the voting power of the citizens, subject of course to the differences of the plural suffrage, but irrespective of the size and population of the parliamentary constituencies in which the citizens exercise their right, or better, their political function of suffrage.

To this end the system combines uninominal voting with list voting (*scrutin de liste*) — the adoption of the latter being necessary for the working out of a proportional distribution of the seats amongst three or four parties — in such a way that a voter may actually vote for one seat only, no matter whether his constituency elects twenty members or only three or four. It is therefore strictly true to say that in Belgium an individual voter, plural or otherwise, has just as much influence, and no more, at the polls as any other voter, plural or otherwise, notwithstanding that the one may belong to a large constituency of perhaps one million inhabitants and the other one to a small one of scarcely one hundred thousand.

The second principle is the adequate representation of all the important sections of public opinion, no longer according to the somewhat rough methods of the majority or of the plurality rule, but in accordance with the nicely balanced system of proportional representation, which guarantees to the leading parties on both sides the possession of a number of seats strictly proportionate to the number of votes which each party can poll.

To that end, the returning officers in each constituency first make up for each list of candidates the grand total of the votes which it has received. Such sum is called the party's *electoral figure.*

Then they seek for these various *electoral figures* a common divisor, in connection with the number of seats to be apportioned in the particular constituency; it is called the *electoral divisor*, or briefly the *quorum*, because it represents exactly the number of votes which will qualify for one seat in the constituency.

Next comes the allotment of seats. Each list of candidates receives a number of them equal to the result of the division of its *electoral figure*, or grand total, by the *quorum*. It is absolutely certain, under this method, that any ticket of which the grand total vote, that is, the popularity at the polls, reaches the *quorum* level once or several times, shall carry one or more seats. The only tickets to be excluded from the apportionment are those of factions apparently too eccentric to obtain the necessary votes for a single seat. It is only fair, for local or personal *cliques* are not to be reckoned as political parties.

However, most of the tickets are likely to include a number of candidates somewhat in excess of the number of seats allotted to the several parties, and the problem arises of how to confer the seats in order once more to represent proportionally the various shades of sentiment which generally exist within a party, — the more likely so if a party may claim to be very large and really representative of a national majority.

The law, therefore, enacts that political parties shall nominate their candidates on the ticket in a preferential order, which they may determine as they please, and that the voters are at liberty either to adopt and ratify, or to contradict and upset the said preferential order by the manner of their vote.

The combination is at once clever and simple. The voter who wishes to indorse the preferential order simply marks his vote above the ticket, and hands in a straight ticket or *vote de liste*. He, on the contrary, who wishes to signify his preference for any given candidate and to advance him to the first rank on the ticket, marks his vote in the margin of the particular candidate's name. His vote is called a *preferential vote*.

Both the straight vote and the preferential vote go to make up the ticket's grand total or *electoral figure*, for they are both undoubtedly in favor of the party as a whole.

After making the separate count of the straight votes and the preferential votes on each ticket, for each name, the returning-officers allot the seats to the candidates who have won the largest vote in each ticket.

First in rank are the names indorsed by the mass of straight tickets: each of them is to receive from it a number of votes which, added to his own preferential vote, will secure for him the necessary *quorum*. It is only fair, after the indorsement of the order of candidates by the bulk of the party. Such devolution of straight

ticket votes continues in succession on the following candidates, until there are no more straight votes available.

Then a mere comparison of figures will determine the lucky owners of the seats; namely, those who have reached the *quorum*, either by the devolution of the straight votes or by the accumulation of a sufficient number of preferential votes.

Once more the only ones to be discarded will be the names not popular enough to secure the minimum of votes necessary to acquire a single seat.

Proportional representation has been likened rather aptly to a photographic proceeding, I mean, a photograph without artificial corrections. Somebody also appropriately called it an electoral metre, which could not possibly show wrong indications of public opinion, because it works merely by the rules of the most exact of sciences; and granted that it does not preclude the possibility of errors at the hands of an unscrupulous operator or of an unskilled calculator, there is this, however, for it, that it makes an error so easily tangible and so palpably evident that it may well be said to discourage any disposition to tamper with the ballot-boxes or to "fix the returns" in any way.

If it looks rather intricate and cumbersome at first sight, — not unlike all arithmetical problems in their exposition, — yet the system works in a perfectly clear and smooth way when applied to figures, because it requires only elementary calculations.

The justification — one might almost say the necessity — of these two reforms lies in the modern conception of suffrage. The old theory is generally left aside to-day, which considered the suffrage as an inborn right, and it is almost everywhere looked upon as a function, as a duty thrust upon the citizen in the interest of the whole community to which he belongs.

Hence it is fair that this civil mandate be intrusted preferably to the more enlightened, the more interested, and the more responsible of the body politic, and to each according to his capacity or his interest in the good administration of the commonwealth.

Hence, also, it is fair that the law guarantee to those whom it charges with such mandate the efficiency of the act which they are to perform; for the vote has small importance indeed to the members of the minority, if they can see in it nothing but a Platonic and, at most, a negative demonstration, as in all the systems which allow a bare majority of voters to carry all the seats in a constituency.

However, with proportional representation, fairly and accurately as it works in Belgium, there is always bound to be one or more important sections of public opinion insufficiently represented in Parliament or possibly altogether deprived of such representation. The circumstance at first sight does not seem very remarkable, for,

under any conceivable régime of representative government, the majority of the voters will probably own the majority of the seats — gerrymandering being left out of consideration — and overrule the minority.

But the great boon of proportional representation is that it insures the actual and permanent check of the majority by representative minorities, and in that way it procures better legislation and a more moderate and more conscientious expression of the general will of the community through the legislative activity of Parliament.

The consequences for public life are obvious: the stability of a government and the unquestionable authority of laws deriving their prestige from the undisputed majority of a whole nation, while the minority cannot any more claim that it is overridden or foully suppressed.

Those reforms, however considerable they are in themselves, would not amount to much if the Belgian law had not, by a remarkably bold departure from the accepted ideas, made voting a compulsory duty.

For it is not much use to devise a nicely balanced machinery and to fit it so that it will work smoothly, unless the whole body of the voters can be got to make it work.

And precisely the worst to be looked for in a political organization resting upon popular suffrage is an ill-fated combination of excessive activity on the part of the disorderly elements with the natural apathy of the orderly ones, for politics repels the latter just as much as it attracts the former.

True it is that the electoral trust rests imperatively upon all the citizens and that nobody who has been honored with it can neglect it without committing a serious breach of duty. But it is too well known also that mere suasion is not always strong enough to overcome the aversion which most of the honest and quiet people feel for active political demonstrations of any kind.

Hence it is necessary for the law to compel them to perform their duty. And the law could do that all the better in Belgium since it had already guaranteed to every one the efficiency of his vote; stay-at-home voters in Belgium no longer have any excuse.

I said that the institution of compulsory voting was a bold stroke of policy, because whereas most people agreed upon the desirability of it in theory, yet before that practical experiment, almost everybody equally believed that it was impossible in practice.

Just a little common sense proved enough to overcome that unreasonable fear.

The failure to vote in an individual instance may be a slight thing in itself, but it is primarily a bad example, and it is positively fatal as soon as it becomes general.

The problem, then, was to find a penalty for it which should not be excessive, — because that would have killed the reform on the spot, — but which would be efficient in its moderation and simple of application. Failure to vote was made by statute a petty offense, liable before the magistrates to small punishments ranking from a reprimand up to a fine of five dollars for the first three offenses; at the fourth time within a space of fifteen years, the magistrate imposes the same penalties with a suspension of electoral rights for the next ten years; and the suspended voter suffers, moreover, a kind of political *capitis deminutio* and is deprived during the same period of the *jus honorum;* that is, he can no more receive official titles, promotions, distinctions, or nominations of any kind whatsoever. The merest knowledge of human nature will satisfy the student about the efficiency of such a sanction.

As a fact, the result looked for by the Belgian legislature has been fully reached: we have to-day no more than five per cent. of absentee voters in a total of 1,500,000 voters, disposing of about 2,300,000 votes. And after deducting from the small proportion of five per cent. of absentee voters the deceased voters on the register and those who afford a valid excuse for staying away, such as illness or absence from the country, recent statistics show that the willful and guilty abstainers really amount to about three per thousand of the total voting force.

Compulsory voting, as it works in Belgium, is really the keystone of the newest electoral organization. To its efficiency is mainly due the efficiency of plural suffrage and of proportional representation. Good in themselves as are those two reforms, they cannot but remain merely theoretical achievements so long as you cannot bring to the polls the bulk of the best citizens, those precisely without whose opinion no political verdict can fairly be pronounced a completely sincere and truly representative demonstration of public opinion.

I do not touch here upon such various and important questions as the registration of voters, the nomination of candidates, the organization of parties; neither do I mention the guarantee of freedom and secrecy of the ballot, because a study of those questions — which, by the way, are less novel — would have required a great deal of minute analysis and of technical detail. My object is only to draw the attention of this Universal Congress to three new theories quite recently applied in practical politics. But I must say that even those reforms imply the existence of an already advanced political organization, of strongly constituted parties, of a high standard of political ethics, and of a strenuous public demand that elections shall be (or become) a free, sincere, and loyal consultation, equally exempted from individual or machine corruption, and from

governmental or administrative interference in any degree. Such happy conditions exist in Belgium to-day, and they made the reform at once easy and successful. I have no wish to talk politics in a gathering of scientists; therefore I will refrain from mentioning the particular effects which the reform has had on the standing of the various political parties in Belgium. We are concerned here only with the history of political theories, and a mere chronicle of political events is foreign to our present studies.

But I must say that since that reform, and although it was contemporaneous with the institution of universal suffrage, elections in Belgium work with a tranquillity, a smoothness, and a regularity which have been the wonder of those who remembered the disquieting agitation that used to attend them in former times, under the majority rule. This result is very important, for it has confirmed by a most decisive experiment the unimpeachable fairness and sincerity of the new Belgian régime — and this is no small merit, indeed.

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BY EMLIN M' CLAIN

The mass of literature bearing upon the history of the law is so great that it would be useless in a brief note to attempt to catalogue even those works which may properly be regarded as monumental. The following list of reference books includes some of the treatises available in English which may serve as guides to direct the student to the original sources of information.

A brief account of the ancient codes may be found in Guy Carleton Lee's *Historical Jurisprudence* (1900). *The Code of Hammurabi, King of Babylon* (about B.C. 2250), referred to in the foregoing paper, has been published, with a translation by Robert Francis Harper (1904).

The development of early Roman law is outlined in many excellent treatises, with full references to original authorities and elaborate commentaries; among these may properly be mentioned: William C. Morey's *Outlines of Roman Law* (1884, 1902); James Muirhead's *Historical Introduction to the Private Law of Rome* (1886); Rudolph Sohm's *Institutes of Roman Law* (trans. by James Crawford Ledlie, 1892); Thomas Collett Sandar's *Institutes of Justinian* (Am. ed. with Introduction by William G. Hammond, 1876).

The medieval codes, both Roman and Teutonic, are fully catalogued and described in Edward Jenks's *Law and Politics in the Middle Ages* (1898).

A detailed account of the early development of the English common law will be found in Pollock and Maitland's *History of English Law* (2 vols. 1895), and no other reference to the subject is necessary.

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DEPARTMENT VIII — HISTORY OF RELIGION

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(*Hall* 5, *September* 20, 2 *p. m.*)

CHAIRMAN: REV. WM. ELIOT GRIFFIS, Ithaca, N. Y.
SPEAKERS: PROFESSOR GEORGE F. MOORE, Harvard University.
PROFESSOR NATHANIEL SCHMIDT, Cornell University.

THE Department of History of Religion was presided over by the Rev. William Eliot Griffis, D.D., L.H.D., of Ithaca, New York, formerly of the Imperial University of Japan, and author of *Religions of Japan*. In presenting the speakers Dr. Griffis said, in part:

"It is for us to trace out what are man's primitive beliefs in presence of the universe. What are, and what have been, his conceptions of duty and propriety? What are the lines of action on which he has formulated his ritual or expressed his dogma? How has he shown his capacity to reason from the known to the unknown, and thus to enlarge, expand, and deepen his theory and practice of religion?

"It is because the human and subjective element is so universally and potently present, that, in the study of religion, especially, we are to be always on our guard, lest the accuracy of our laboriously gathered data and our conclusions, however patiently wrought, be vitiated.

"Strictly speaking, there is, there can be, no 'conflict' between religion and science, no more, indeed, than between chemistry and science. Nor can there be, any more than between science and organic chemistry, such a thing as a 'warfare' between science and dogmatic theology. We are to beware of the unscientific prejudgment with which investigation is often carried on. There have been, there always will be, disagreements and even quarrels and conflicts between men who profess to be exponents of 'science' in any form. Where that 'science,' whether rightly or not so called, represents human authority of any kind, or is expressed in terms that are unscientific, or its formulæ, whether issuing from conclave or throne, laboratory or book, are made engines of government, there must almost of necessity be conflict and even strife.

"To take note of the progress that has been made within the past hundred years toward assembling, classifying, and comparing the materials, and in the discernment of what ideas and conceptions are common to the varied mass furnished by humanity, is as appropriate to the purpose and plan of this Congress as are the other tasks set before this gathering of scholars of many nations. Work in this Department may be as valuable toward helping us to reach the goal of the unification of knowledge, and be as effective for the progress of mankind, possibly even more so, than that in other lines of human achievement."

THE HISTORY OF RELIGIONS IN THE NINETEENTH CENTURY

BY GEORGE FOOT MOORE

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THE encyclopedic scheme of this Congress assigns to the History of Religions its proper place as one of the great departments of historical science. My task is to trace the progress of this branch of learning in the nineteenth century. The Philosophy of Religion belongs to another division of the Congress; the Problems and Methods of the History of Religions are to be discussed at this session by Professor Schmidt; while the history of research in the chief religions of the world individually, and the present state of investigation in each, will engage the several sections of this Department. The nature and scope of the present paper are thus defined; it is to sketch in outline the development within the last century of the general history of religions, avoiding as far as possible trenching upon the fields of other speakers.[1]

The history of religions was not, either in name or in fact, a new study in the nineteenth century. The revival of learning brought to the knowledge of scholars the religions of the Greeks and Romans, and what Greek and Latin writers had to tell of the religions of other ancient peoples — Egypt, the Semitic East, Persia, and India. The study of the Bible, to which the Reformation gave a new impulse, opened the sources of the history of Judaism and Christianity. Travelers and discoverers from the beginning of the fourteenth century brought back accounts, often marvelous enough, of the religions of remoter Asia, and, from the new continent beyond the sea, of the civilized peoples of Mexico and Peru as well as of the savage tribes. Soon missionaries, both in the Old World and in the New, from more intimate acquaintance, began to give more authentic

[1] See Hardy, E., *Zur Geschichte der vergleichenden Religionsforschung,* in *Archiv für Religionswissenschaft,* IV, 45–66, 97–135, 193–228; Jastrow, M., Jr., *The Study of Religion,* 1901, c. 1. To the classified bibliography appended to the latter work (pp. 401–415) the reader is referred for a fuller survey of the literature than can be given in this paper.

information about the beliefs and customs of many races. A keen interest was thus aroused in the religions of the world, and in the seventeenth and eighteenth centuries many comprehensive works upon the subject were written, some of them on a large scale. Most of these are descriptive rather than properly historical, but the name "History of Religions," implying at least an apprehension of the true nature of the task, became common toward the end of the eighteenth century.[1]

The question of the origin of the heathen religions was also discussed in the seventeenth and eighteenth centuries, the prevailing opinion being that the worship of the heavenly bodies was the earliest form of "idolatry" — a theory which had been inherited from the last ages of classical paganism itself. Voltaire touched with a keen observation the improbability of this theory; both he and Fontenelle made some sensible and strikingly modern remarks on the subject, which passed unheeded. Dupuis's *Origines de Tous les Cultes*, which we may take as marking the close of this period, is a learned and thoroughgoing attempt to trace all religions and mythologies, including Judaism and Christianity, to one source, Egyptian sun-worship.[2]

The astral theory of religion was not, however, in undisputed possession of the field at the beginning of the nineteenth century. Its ancient rival, Euhemerism, still had its adherents,[3] and a new and formidable competitor had appeared. De Brosses, in his *Culte des Dieux Fétiches*,[4] turned from interpretations of poetical mythology to the investigation of the religions of living races in a state of savagery, and showed how irrational phenomena in higher religions, such as the worship of living animals in ancient Egypt, might be explained by the beliefs and customs of modern African tribes. Upon the lowest plane of culture men worship, not the heavenly bodies, but chance stocks and stones, rocks of strange shape or color, trees, animals, all of which De Brosses comprised under the term "fetish," originally applied by the Portuguese to the rude artificial

[1] Among the earliest comprehensive attempts was Alexander Ross, *Πανσεβεια, or View of all the Religions of the World . . . from the Creation to these Times*, London, 1652. This work had an extraordinary success; a second edition appeared in 1655, a third in 1658; and within ten years it had been translated into Dutch, German, and French. Of the works of the eighteenth century it may suffice to name here the large and splendidly illustrated *Cérémonies et Coutumes Religieuses de tous les Peuples du Monde*, Amsterdam, 1723–37, 7 vols. fol., afterwards enlarged to 10; sumptuously reprinted, Paris, 1807–10, in 11 vols. The engravings are by Bernard Picart, the (anonymous) text by J. F. Bernard and others.

[2] Dupuis, C. F., *Origines de Tous les Cultes, ou Religion Universelle*, Paris, 1794, 3 vols. 4°, with a supplementary volume of plates; also in 10 vols. 8°.

[3] The most important work of this school in the eighteenth century was that of Banier, A., *La Mythologie et les Fables expliquées par l'Histoire*, Paris, 1738–40, 3 vols. 4°; 2d ed. Paris, 1748, 8 vols. 8°; English translation, *The Mythology and Fables of the Ancients explained from History*, London, 1739–40, 4 vols. 8°.

[4] De Brosses, C. F., *Du Culte des Dieux Fétiches, ou Parallèle de l'Ancienne Religion de l'Egypte avec la Religion Actuelle de Nigritie*, 1760, 12°.

objects possessing magical properties, half amulet, half idol, which play a large part in the religion of the West African negroes. Still farther extended to the worship of material objects in general, sometimes including even the heavenly bodies, "fetishism" became a formula in which many writers of the last century thought that the origin of religion had been found.

The position of the history of religions in Germany at the beginning of the nineteenth century is best represented by Creuzer's *Symbolik und Mythologie der Alten Völker*.[1] The successive editions of this work, the French translation and adaptation by Guigniaut,[2] and the writings of Creuzer's disciples — among whom F. C. Baur is numbered [3] — may be said to record the history of the subject through the first half of the century. The discredit into which Creuzer's theory of "symbolism" has fallen, in consequence partly of the contemporary criticism of Lobeck [4] and others, partly of the general progress of the study, should not lead us to ignore the fact that his volumes furnished a useful and comprehensive collection of what was then known about the principal religions of the world; while of the theory itself it has been justly said that it had at least the merit of recognizing that mythology is a product of religion, not merely a play of poetic fancy.

Reviewing from our own point of view these earlier essays, we can see that the treatment of the history of religions suffered, like all other branches of historical research, from the striking lack of the historic sense which characterized the age of "Aufklärung," and from the alternative attitude of credulity or skepticism toward the sources which could be overcome only by the establishment of the principles of historical criticism; while peculiar hindrances existed in religious prepossessions. So long as Christian writers regarded all the religions of the world except Judaism and Christianity as sinful aberrations from a primitive revelation, and freethinkers conceived of all existing religions, including Christianity, as corruptions, under the hand of self-seeking priests, of a pure "natural religion," no true understanding of the phenomena was possible. The way to progress was opened by a sounder conception of the nature of history

[1] Creuzer, Fr., *Symbolik und Mythologie der Alten Völker*, 1810–12; 2d ed. 1819–23, 6 vols. with Atlas; 3d ed. 1837–42, 4 vols.

[2] Guigniaut, J. D., *Les Religions de l'Antiquité*, Paris, 1825–41, 10 vols, 8°.

[3] Baur, F. C., *Symbolik und Mythologie oder die Naturreligion des Alterthums*, 1824–25, 3 vols.

Of the numerous other works of the first half of the nineteenth century may be named, Meiners, C., *Allgemeine kritische Geschichte der Religionen*, 1806–07, 2 vols.; Constant, B., *De la Religion considérée dans sa Source, ses Formes, et ses Développements*, 1824–34, 5 vols; Schwenck, Konrad, *Mythologie der Griechen, Römer, Aegypter, Semiten, Perser, Germanen und Slaven*, 2d ed. 1855, 7 vols. (1st ed. under a somewhat different title, 1843–53); Eckermann, K., *Lehrbuch der Religionsgeschichte und Mythologie*, 1845–1848, 4 vols.

[4] Lobeck, Chr. A., *Aglaophamus, sive de theologiae mysticae Graecorum causis*, 1829.

in general, and of the history of religion in particular, which we associate with the names of Lessing and Herder. That the history of religion is the record of a development whose law is, first that which is natural, then that which is spiritual, is an idea so familiar to us that it is hard to realize that little more than a century ago it was novel and revolutionary.

The acceptance of a true conception of history and the achievement of a sound historical method would, however, of themselves have availed little, apart from the vastly enlarged knowledge of religions, both ancient and living, which has been gained in the last hundred years.[1] At the beginning of the century the religions of Greece and Rome, Judaism, Christianity, and Islam were the only religions which were known through native sources or their own sacred books, unless we make a partial exception of Chinese texts translated by Jesuit missionaries. For Egypt and Babylonia, India and Persia, the chief or only sources of information were the fragmentary and often conflicting reports in Greek and Latin authors. Since then the religious literature of India, surpassing all others in extent and variety, and covering a period of three thousand years, has been brought to light. The Avesta, whose chief books were brought to Europe in the eighteenth century, has been made intelligible by the labors of three generations of scholars, and many later Zoroastrian writings recovered. The Chinese classics and the sacred books of Taoism have been repeatedly interpreted in the light both of native comment and of Western philology. The decipherment of the Egyptian hieroglyphic writing in the early nineteenth century was followed by continuous excavation and discovery, the latest stages of which have extended the historical horizon over distant centuries, and promise to make the civilization and religion of the Old Empire almost as well known as that of the New. In Assyria and Babylonia civilizations not less ancient than that of Egypt have been brought to light; and there also religious monuments and texts of the most diverse kinds, representing perhaps four millenniums, are accumulated with a rapidity that outruns the utmost activity of decipherers and students.

In the classical field the discovery and methodical use of remains and monumental sources has done much to enlarge and correct the notions formed from the literature alone. By this means only it has proved possible to reconstruct, at least in broken outlines, the genuine Roman religion, as distinct from the late syncretism which is represented by all the literary sources. Recent excavations, again, have revealed the antiquity of a high Hellenic or Proto-Hellenic civilization in the eastern Mediterranean basin, and of an active intercourse

[1] On the history of these discoveries, see Hardy, *Archiv für Religionswissenschaft*, IV, 97 ff.

with Egypt and the East; while the "Mycenaean" tombs and the palaces and caves of Crete disclose something at least of the religion of that remote age. The discovery or evaluation of a multitude of documents of inferior religious authority, but often of the highest historical importance, and above all the critical study of the canonical sources themselves and the comparison of other religions, have led to conceptions of the history of Judaism, Christianity, and Islam, differing often radically from those which prevailed only a generation ago. Thus on all sides the authentic knowledge of the chief historical religions of the world has been immeasurably enlarged by the discoveries and investigations of the nineteenth century.

Sacred books and other literary sources are, however, not the only witnesses to ancient religions.[1] The collection of German "Mährchen" made by the brothers Grimm, proved to contain Teutonic myths, depotentiated and disguised; and comparison with Norse, Greek, and later with Vedic mythology, suggested that in Germanic folk-lore were remains of a common Indo-Germanic tradition.[2] The investigation, by Mannhardt and others, of popular customs, especially peasant customs, and beliefs connected with agriculture and vegetation, showed that here also, in what the prevalence of Christianity had reduced to the rank of superstitions, were survivals of the religions which Christianity supplanted.[3] The study of folk-lore and the "lower mythology," and of popular custom and superstition, which has been so diligently prosecuted in the last half-century, opens to the student of the history of religions sources which often supplement or interpret in a most welcome manner his literary material. For the great mass of peoples and religions which have never created a sacred literature the student is wholly dependent on this stream of living tradition and practice. Anthropology, which Waitz raised to the rank of a science,[4] gives to religion a place corresponding to its pervasive significance in savage and semi-civilized societies, and thus becomes one of the most important auxiliaries of the history of religions. It has established the universality of religion, and shown, beneath all differences, a large measure of agreement in the religions of peoples of the most diverse races upon the same plane of culture and with similar social organization. The study of the agreements and the differences shows the common characteristics of the savage mind, the influences of history and

[1] See on the following, Mannhardt, W., *Wald und Feldkulte*, 1875–77, 2 vols., vol. II, pp. i–xi.

[2] Grimm, J. u. W., *Kinder- und-Hausmärchen*, 1812–15; 2d ed. 1819–22, 3 vols. See especially, Grimm, J., *Deutsche Mythologie*, 1835; 2d ed. 1844; 3d ed. 1854; 4 ed. besorgt von E. H. Meyer, 1875 *sqq.*

[3] See Mannhardt, cited above, n. 9.

[4] Waitz, Th., *Anthropologie der Naturvölker*, 1859 *sqq.* (continued by G. Gerland); see also Bastian, A., *Der Mensch in der Geschichte*, 1860, 3 vols., and in numerous other works.

environment, and peculiarities that seem to be racial. The subject presents to the student of social psychology some of his most interesting problems.

Between the religions of the lowest peoples and those which have reached the highest level in intelligence and spirituality there is an unbroken connection; not only do survivals and superstitions persist in the most advanced religions, but the germs of their loftiest conceptions may sometimes be recognized in barbarous surroundings. The field, wide as it is, is one; the history of religions points onward to a history of religion.

The immediate task of the scholars of the nineteenth century in their several fields was the mastering of these vast acquisitions of material — the establishment of trustworthy texts, the creation of philological apparatus, the interpretation and criticism of the literature; the restoration and decipherment of inscriptions; the verifying and sifting of the reports of travelers and discoverers; the comparison, classification, and interpretation of phenomena. Great things have been accomplished in all these directions by philologists, archæologists, and ethnologists; upon the foundations thus laid future generations will securely build. If the division of labor sometimes narrowed the horizon, it at least conduced to thoroughness in a limited field. The relations of some languages and literatures to one another were, however, such as not only to invite but to demand comparative treatment. The older Avestan scriptures, for example, could be rightly understood only when the light of comparative philology was added to the native tradition; and the common background of the Indian and Iranian religions seemed to require the application of the same method. Names and myths appeared, again, to connect the gods of the Vedic hymns with those of Greece, and more remotely with other branches of the Indo-Germanic family. The philologists who attempted by comparison of the common stock of words or roots to construct a picture of primitive Indo-Germanic culture could not exclude from their consideration the language of religion.

It was, in fact, from Vedic studies that the initiative came, which in the second half of the nineteenth century gave a new impulse to the study of the history of religions; and Professor F. Max Müller, if not the originator of the "Comparative Science of Religion," will always have the merit, not only of contributing largely to its progress, but of having created an interest in the subject, and secured a support for it without which some of its most notable achievements would not have been possible.[1] It is easy now to see the fundamental

[1] See Kuhn, A., *Hermes-Sarameyas, Zeitschrift f. das Alterthum*, VI, 1848, 117–134; *Die Herabkunft des Feuers und des Göttertranks*, 1859; Schwartz, W., *Ursprung der Mythologie*, 1860; *Sonne, Mond und Sterne*, 1864; Müller, Fr. Max, *Comparative Mythology* (Oxford Essays), 1856; *Chips from a German*

defects of Müller's method and the erroneousness of many of the conclusions which, with little modification, he maintained to the end of his life. The hymns of the Rig-Veda are almost as far as the Homeric epics from being the product of a simple society, or the "childlike speech" of primitive religion; the equation of Indian and Greek gods and myths is often effected by dubious etymologies or partial and inconclusive coincidences. The identification of the gods with natural objects, and the meteoric interpretation of the myths is assumed — following the classical mythologists of the time — rather than established; the insecurity of the results being manifest from the possibility of the rival "nubilar" or "crepuscular" theories. The most radical fault of the system, however, was the arbitrary limitation of the material. In particular, the isolation of hymns and myths from the ritual was a fruitful cause of misunderstanding; and the assumption that the darker side of Indian religion, as represented in the Atharva-Veda or parts of the Brahmanas, is wholly a late declension from the pure Vedic faith, led to its virtual exclusion from consideration; the same assumption was made concerning the darker features of Greek religion in contrast to the aspect presented in the Homeric poems.

At this point, therefore, Müller's method and results were assailed by the critics of the anthropological school, among whom Andrew Lang wielded the most trenchant pen.[1] What demands explanation in the myths is the irrational and immoral element. This is not to be explained away by allegorical interpretation, in ancient or modern fashion; it is not accounted for by the theory of "disease of language," which makes of it misunderstood poetry or metaphor. The savage features of ancient mythology are the natural product of a savage state of society, and survived in civilization under the conservative influence of religious tradition. The proof of this is the mythology of modern savages, in which corresponding phenomena are observed among the most widely separated and diverse races. Moreover, mythology is not the only or even the most important witness to religious beliefs. Custom, ceremony, ritual — the things which the gods expect of men and which the worshipers do in the service of the gods, not tales about the gods, of whatever origin — constitute the real substance of religion, and embody its fundamental ideas. Many myths are not poetical reflections of natural phenomena,

Workshop, 1867, 2 vols.; *Lectures on the Science of Religion*, 1872; *The Origin and Growth of Religion, illustrated by the Religion of India* (Hibbert Lectures), 1878; *Natural Religion*, 1889, *Physical Religion*, 1891, *Anthropological Religion*, 1892, *Theosophy, or Psychological Religion*, 1893 (Gifford Lectures); *Contributions to the Science of Mythology*, 1897, 2 vols.

[1] Lang, Andrew, *Custom and Myth*, 1884; *Myth, Ritual, and Religion*, 1887, 2 vols.; 1899, 2 vols.; *Modern Mythology*, 1897; *The Making of Religion*, 1898, 2d ed. 1900; *Magic and Religion*, 1901. The last two volumes against some positions of the anthropological school.

but efforts to account for the existence of strange rites and customs or to explain their meaning.

It is the task of the modern student, not merely to collect from the writings of travelers, missionaries, and political agents the facts concerning the religious practices and beliefs of rude peoples, and to record and classify them, but to account for their origin and persistence, and for the transformations they undergo in the development of civilization. This was the problem to which Tylor addressed himself, particularly in his *Primitive Culture*.[1] Man's earliest known explanation of the phenomena and forces of nature is "animation"; not only what we call living things, but what are for us inanimate objects, are by primitive man endowed with a life like his own, a soul with passions and will. There are also spirits that are not confined in particular objects, but roam freely, manifesting themselves sometimes in one way or place, sometimes in another. These spirits are in part the souls of dead men, neglected or hostile, which it is necessary to placate or to avert. This primitive "animism" is the earliest science and philosophy; though not itself religion, it shapes the religious conceptions of savages everywhere, and maintains itself with extraordinary tenacity in advancing culture. Fetishism, stock- and stone-worship, idolatry, as well as ancestor-worship, Shamanism, and magic, have their roots in it. With a one-sidedness which Tylor carefully avoids, Herbert Spencer, Lippert, and others derive all religion from offerings to friendly ghosts or rites designed to thwart the malice of unfriendly ones;[2] Spencer's theory being in effect, as he himself recognizes, a revival, in an apparently scientific form, of ancient Euhemerism.

Anthropological studies have not only thrown light upon the operation of the savage mind and on the influence of its theory of man and nature upon religious conceptions, but have shown how the development of religious ideas has been affected by the social organization. The phenomena to which the name "totemism" has been given, for example, are generally associated with a peculiar clan constitution, in which descent is regularly reckoned in the female line. Traces of this form of social organization have been discovered among peoples which have long since got beyond it; and it has been inferred, on insufficient grounds, that all races have passed through it. But while this generalization may not stand, the studies of McLennan, W. Robertson Smith, Frazer, and Jevons[3] have unques-

[1] Tylor, E. B., *Researches into the Early History of Mankind and the Development of Civilization*, 1865; *Primitive Culture*, 1871, 2 vols. 3d ed. 1891; Lubbock, J., *The Origin of Civilization and the Primitive Condition of Man*, 1870, 6th ed. 1902; *Prehistoric Times*, 1865, 6th ed. 1900.

[2] Spencer, Herbert, *Principles of Sociology*, ch. 8–16; Lippert, Julius, *Kulturgeschichte der Menschheit*, 1866–67, 2 vols.

[3] McLennan, J. F., *Fortnightly Review*, Oct. and Nov. 1869, Feb. 1870; Frazer, J. G., *Totemism*, 1887; *The Golden Bough*, 2 vols. 2d ed. 1900; Smith, W. R.,

tionably shed light on many hitherto obscure problems in the history of religion. The recognition of the intimate connection between the social and political organization and religion has, however, a much larger significance, which remains to be fully evaluated. Closely related to this are the economic factors, which have influenced the development of religion both indirectly, through the social organization — the conditions, for example, which make the horde rather than the tribe the unit — and directly, by determining occupation, constraining to migrations, and the like. This side of the subject has only recently begun to receive the consideration it deserves, especially at the hands of French scholars, Tarde, Durkheim, and others. The general trend of modern investigation has thus been to bring out the complexity of the problem, the multiplicity of the factors whose interaction has determined the development of religions.

In the discussions of the last century the question of the origin of religion has had a prominent place. In one sense, Why is man so universally and obstinately religious? the question belongs to the philosophy of religion; the history of religions can give no answer, though it can put the theories of philosophers to the critical test by comparison with the facts. But in the other sense in which the question is often taken, What was the primitive form of religion? the historian must again confess his inability to answer. There was a time, not so long ago, when the Homeric poems or the hymns of the Rig-Veda were imagined to be witnesses to primitive Indo-European religion. The anthropologist makes a similar mistake when he imagines that the religions of the lowest modern savages may be regarded as survivals of primitive religion. The Australian black or the Andaman islander is separated by as many generations from the beginning of religion as his most advanced contemporaries; and in these tens or hundreds of thousands of years there has been constant change, growth and decay — and decay is not a simple return to the primal state. We can learn a great deal from the lowest existing religions; but they cannot tell us what the beginning of religion was, any more than the history of language can tell us what was the first form of human speech. In like manner, attempts to define the stages of religious development, as, for example, in Comte's scheme, Fetishism, Polytheism, Monotheism, with a prophecy of Positivism, have very little value even as a scheme of classification.

Reviewing the progress of the last half-century, we see that the field of investigation has been widened so that it now includes all known religions, ancient and modern, from the lowest to the highest, and that all the sources and the special sciences which throw light

Kinship and Marriage in Early Arabia, 1885, 2d ed. 1903; *The Religion of the Semites*, 1889, 2d ed. 1894; Jevons, F. B., *Introduction to the History of Religion*, 1896.

upon man and society are made tributary to the history of religion. Psychology, individual and social, anthropology and ethnology, archæology, social, political, and economic history, as well as literature, are consulted, for it is recognized that nothing which affects man's life, inner or outer, is devoid of influence on his religion. It has also become clearer, in the course of investigation and discussion, that the study of religions is a purely historical discipline, to be pursued by strict historical methods. By confining itself to its proper task it will lay the securer foundations for a philosophy of religion. For this reason objection may properly be made to the name "Science of Religion," introduced by Max Müller, and adopted by many, for example, by Tiele in his Gifford Lectures. The term "science," by its correspondence to "Science of Language," suggests, to the English reader at least (and was, I think, intended to suggest), a method and a goal different from those which we regard as properly historical; a search for principles and laws such as belong to the natural sciences and to certain philosophical conceptions of history, Hegelian or Positivist. The influence of this idea may be seen in the attempted classifications of religions, whether Müller's own (artificial) linguistic classification, or Tiele's "morphological," and in intent genetic, system. Asserting the scientific character of all rightly conducted historical investigation, we have no reason to emphasize it specially in the case of the history of religions, and do better to disuse a term which is either a truism or an error.

It remains to speak briefly of the place which the history of religions has made for itself in the world of learning.[1] The consciousness that a new and important field of knowledge had been opened by the discoveries of religious literatures and monuments in the nineteenth century manifested itself in various ways. In Holland a series of volumes, in the sixties, on the leading religions of the world, including Judaism and Christianity, from a purely historical point of view, was followed, in the reorganization of the theological faculties of the state universities in 1877, by the establishment of chairs of the history and philosophy of religion, of which that at Leiden was filled by Tiele;[2] while a corresponding chair in the city University of Amsterdam was occupied by Chantepie de la Saussaye.[3] In France a professorship of the history of religions in the Collège de France was founded in 1879, and has been filled since that time by

[1] See on the following, A. Réville, "La Situation Actuelle de l'Enseignement de l'Histoire des Religions," *Revue de l'Histoire des Religions*, XLIII, 1901, 58 ff.

[2] Tiele, C. P., *Geschiednis van den Godsdienst in de Oudheid tot op Alexander den Groote*, 1893, 1902, 2 vols.; German translation by G. Gehrich, *Geschichte der Religion im Alterthum*, 1895 *sqq.*; *Elements of the Science of Religion*, 1897, 1899, 2 vols. (Gifford Lectures).

[3] Chantepie de la Saussaye, P. D., *Lehrbuch der Religionsgeschichte*, 1887–89, 2 vols. 2d ed. (with the coöperation of a number of scholars), 1897, 2 vols.

Albert Réville;[1] and in 1886 a section of the religious sciences was formed in the Ecole des Hautes Etudes en Sorbonne. The progress of these studies in France was also much furthered by the establishment of the Musée Guimet (1879; since 1888 in Paris), with its collections and library and its liberal subvention of publications, including the first periodical devoted to the subject, the *Revue de l'Histoire des Religions* (since 1880). In England a long series of Hibbert Lectures, and more recently several of the Gifford Lectures, have contributed to the spread of knowledge and the quickening of interest; while the *Sacred Books of the East* have made accessible, in translations by eminent scholars, a large part of the religious literature of the world. In Germany the subject has been slow in finding recognition in university programmes of study, though Roth lectured on it at Tübingen from the fifties to his death, and though German scholars have made many of the most valuable contributions to the study. The *Archiv für Religionswissenschaft* (since 1898; new series 1904) gives a much-needed organ for the publication of investigation and discussion.[2] In America lectures on the history of religions were given in Harvard University in 1854–55, and regularly since 1867; and in more recent years at many other places, among which may be named Boston University, Cornell, Chicago, Yale, and in some of the independent theological schools, as at Andover. Finally, mention must be made of the Parliament of Religions at the Columbian Exposition in Chicago in 1893, whose published proceedings fill two volumes; of the International Congress for the History of Religions in Paris in 1900, and of that which has held its sessions within a few weeks in Basel (August–September, 1904).

On every hand we see a recognition of the importance of the subject and a growing interest in the study. The nineteenth century accomplished much; it is for the scholars of the twentieth century, in all lands, heirs of the labors of their predecessors, encouraged by their success, admonished by their mistakes, to accomplish yet greater things.

[1] Réville, Albert, *Prolégomènes de l'Histoire des Religions*, 1881 (English translation by A. S. Squire, 1884); *Les Religions des Peuples Non-Civilisés*, 1883, 2 vols.; *Les Religions du Mexique, de l'Amérique Centrale et du Pérou*, 1885; *La Religion Chinoise*, 1889.

[2] Other periodicals which should be mentioned are *Revue des Religions*, 1889 *sqq.*, and *Revue d'Histoire et de Littérature Religieuses*, 1896 *sqq.*

FUNDAMENTAL CONCEPTIONS AND METHODS OF THE HISTORY OF RELIGION

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Theology is the science of religion. As such it includes every methodical effort to obtain certain and systematized knowledge of man's religious life. Like any other science, it gathers and sifts, compares and classifies, traces the origin and development of, and seeks to explain, the facts that fall within its domain. In accordance with these varied scientific activities, it is possible to distinguish between descriptive, comparative, historical, and philosophical theology.

Descriptive theology collects, verifies, and presents the facts of religion. Its work is of fundamental importance for all other branches of the science. Absolute comprehensiveness is not attainable. Even a carefully trained critical judgment is liable to err. Perfect objectivity is endangered by the imaginative power and artistic temper necessary for a presentation of the vast material in orderly arrangement, and with vividness of detail and color of life. Yet only in so far as the collection embraces all that is important and characteristic, the critical examination is thorough, and the description approximates accuracy, are the results available as a true foundation for comparison, classification, historical treatment, and philosophical appreciation.

Comparative theology considers the similarities and dissimilarities of religious phenomena and classifies them on the basis of such comparison. It contemplates the material gathered, sifted, and set forth by descriptive theology without any other aim than to establish the exact degree of similarity between religious sentiments, ideas, and practices, prevalent among men in different ages and in different parts of the earth. The infelicitous term "Comparative Religion," once widely used, has rightly been abandoned by careful writers. Theology may be comparative when it limits itself to a comparison

of the phenomena of religion; religion itself cannot be comparative. The vagueness attaching to the term was not seldom an outward sign of the inner confusion in which elements of description, criticism, comparison, history, and philosophy were jumbled together. A student occupied with a description of the Polynesian system of tabus, a criticism of the accounts given by travelers and missionaries, a search for earlier historic forms of tabu in some of the islands, or the ultimate cause of the tabu-conception, is not engaged in comparative theology. He is cultivating this branch of the science of religion when he compares the highly developed Polynesian system with similar tabus in other times and places, and demonstrates that certain ideas and customs, for example of modern India or ancient Persia or Judæa, belong to the same order.

Historical theology, or the history of religion, seeks to discover the origin and to trace the growth of man's religious life. It seeks to establish the sequence in time of religious feelings, thoughts, and practices, and to discern the laws, if such there be, that govern this sequence. It considers the material brought together, examined and classified by the preliminary disciplines from the viewpoint of historical development. It watches the operation of the religious consciousness in its relation to other functions of man's social life, and observes the psychological conditions determining its course. It is not content with gleaning facts, weighing evidence, describing conditions, and comparing and classifying phenomena, but seeks to incorporate the facts as links in a chain of development, to determine the inner connection as well as the chronologial sequence of the facts, to find the place and relative significance of the conditions described, and to discover the relationship indicated by the similarity. But the history of religion does not attempt to estimate the absolute value of any religious sentiment, idea, custom, or institution.

Philosophical theology, or the philosophy of religion, aims to discover the ultimate reality behind the phenomena of man's religious life. This reality it may seek in the constitution of the human mind or in the constitution of the universe. In so far as it endeavors to find in man himself the cause of his religious consciousness, it may be designated as religious psychology. This discipline not only traces the religious phenomena back to the general peculiarities of man's sentient, intellectual, and moral life in the various stages of his development, but also undertakes to test their validity and to estimate their intrinsic and abiding value. The observation of morbid religious conditions in adults, the religious attitude of mentally immature subjects such as children and persons of retarded intellectual growth, or the ideas and practices of uncivilized peoples especially furnishes the religious psychologist with the means of

distinguishing between the normal and the abnormal, and teaches him to measure the value of religion by its relatively sound and properly developed products, rather than by unhealthy, immature, and arrested religious growths. In so far as philosophical theology seeks for the cause of religion outside of man in the constitution of the universe, it becomes a part of ontology or identical with this branch of philosophy. This is obviously the case, whether the historic formulæ of theology are preserved or the philosophical terminology is adopted.

It is with the history of religion that we are at the present time immediately concerned. At the threshold we are met by two questions requiring attention. Is history a science? and What is religion? If history is not a science, the history of religion is not. Science, no doubt, may be so defined as to exclude the work of the historian. If it is maintained that only absolutely certain and perfectly systematized knowledge is worthy of the name, it can at most apply to the so-called formal sciences, which in reality deal exclusively with objects of thought created by the human mind itself. It would be inexpedient, however, to limit the term science to mathematics and logic. Astronomy, physics, and chemistry, though dealing with objective facts, which can never be adequately known, are universally granted to be sciences, not merely because they depend upon mathematics and to a certain extent share its solidity, but also because they attain a high degree of certainty permitting even prediction of facts still in the future. Yet there is a considerable margin of uncertainty in these sciences. The more complex the object of study is, the wider is this margin. There is less possibility of prediction in geology than in astronomy, less in biology than in botany, without prejudice to the scientific character of the study dealing with the more complex organizations. Zoölogy will undoubtedly retain its place among the sciences, even though it may never learn to predict with accuracy the behavior of an animal under given circumstances in the future. Mentality and volition in the objects studied increase the difficulties of the scientific work and confine the element of prediction within narrower limits, but do not render the study unscientific.

As these qualities have reached their highest development known to us in man, and the evolution of man's life is determined by the unfolding of his intelligence and will, it is natural that in this field the facts are less completely mastered, the laws of development less clearly perceived, and the future less accurately foretold than in the case of other objects of knowledge. There seems indeed to be little probability that the innumerable facts and factors of human history will ever be known, or that the varied tendencies of human life, affected as they are by the changing external environment,

will ever be so perfectly traced as to allow the same amount of unerring prognostication as in astronomy. Hence the doubt whether history is a science. But it must be recognized that, with the increase of historical knowledge, the impression of a development according to fixed laws has been steadily growing until at the present time few careful observers would deny that the life of man, in spite of his finer and richer organization, has been as really subject to law as any other part of nature. Nor are serious students of history inclined to question the operation of these laws in the future any more than their dominancy in the past, or to doubt that a knowledge of the tendencies manifest in the historic development of the human race will, in increasing measure, render it possible to predict, within certain limits, whither the currents of thought and life will flow in the future. The name of science is justified by the methodical effort to gain certain and systematized knowledge and by the similarity of the results to those obtained in all but the formal sciences.

Historical theology may therefore without hesitancy be regarded as that branch of the science of history which deals with the development of man's religious life. Its scientific character is in no way affected by any conclusions that may be reached as to the sanity of religious emotions, the propriety of religious practices, the validity of religious conceptions, and the objective reality of the power or powers worshiped. Were religion nothing but a mass of emotions, beliefs, and performances due to an immature or diseased mental activity on the part of man, the rational attempt to trace its origin and growth and to find the laws of its development would still be a scientific work.

In order to accomplish this work, it is of first importance to determine what phenomena of man's life should be assigned to the realm of religion. The great number of definitions of religion that have been proposed shows how difficult a task this is. The confusion in the minds of some eminent scientists revealed by their statements as to savage peoples possessing no religion indicates its necessity. It is evident that in a definition there should be included every important phase of man's religious life, emotional, intellectual, and practical, and every important historic manifestation of religion, whether in early ages known to us only through archæological remains or in later periods known through documentary evidence as well, among uncivilized or civilized peoples. It is not permissible to regard religion solely, or chiefly, as a feeling, or a belief, a more or less perfect interpretation of the universe, or a cult, or a rule of conduct, inasmuch as all these elements are present in some form in all known stages of religious development. The historian of religion has no right to draw an artificial line of demarcation between the so-called prehistoric age and the historic age, and to leave out of consideration

any phenomena of a religious nature known to have belonged to the former. A tomb of the early neolithic period is as infallible a sign of the existence of religion as a church or a mosque or a synagogue is of a particular type of religion in recent times. Nor is he warranted in so defining religion as to put outside its limits any form which in some of its manifestations has ceased to share characteristics common to all others, or to most of them. It is obvious that religion cannot be defined in such a manner as to make Gautama of Kapilavashtu or Jesus of Nazareth devoid of religion, or to render the ecclesiastical organizations that imperfectly reflect their spirit and, in compromise with hostile tendencies, too often have abandoned their fundamental principles, more truly religious than they were themselves. Buddhism especially furnishes a heavy obstacle in the way of definition and a sore temptation to simplify the work by excision. But what has been called the "religion of pity" cannot be left out as a non-religious phenomenon unless it is possible to classify it more satisfactorily as a system of philosophy, of ethics, or of psychology. This does not seem feasible, as it clearly possesses, not only on the emotional and practical sides, but also intellectually, much that is common to the phenomena of man's life that are generally reckoned as religious.

Among the definitions of religion that have been offered, some deserve special consideration. The Latin word *religio* was derived by Cicero [1] from *re-legere*, gather anew, re-collect, take up a thing to give it fresh attention; by Lactantius [2] more correctly from *religare*, bind, attach. The idea of a bond is good; but a satisfactory definition must indicate the character of this bond. Theologians who identified with religion their own form of religion and looked upon all other forms as false religions, having a different origin, being counterfeits of the true one, or having arisen through perversion of a primitive revelation, could define religion only by describing their own particular faith and practice. When, under the influence of the development of the natural sciences, thinkers, especially in England, began to demand that religion should be demonstrated as being in harmony with reason, the defenders of dogma vied with its assailants in maintaining the reasonableness of Christianity. The only difference was that the Deists found it necessary to reject the miraculous superstructure and prove Christianity to be the true exponent of the natural theology of man. This position was still occupied, in the main, by the great German philosophers at the end of the eighteenth and the beginning of the nineteenth century, though their historical horizon was wider and their philosophical insight deeper. Religion was essentially considered from the standpoint of intellectual perception, and even Hegel drew the line between Christianity as the

[1] *De natura deorum*, II, 28, 72. [2] *Divinarum institutionum libri*, IV, 28.

"absolute religion" and all the others. An important contribution, however, was made by Schleiermacher, who recognized that religion is essentially a feeling of dependence. But intellectual prepossessions prevented a fruitful use immediately of this recognition. Only as a wider acquaintance with religious phenomena was gained, a keener historic sense was developed, and a more objective attitude became possible, was the time ripe for more adequate definitions of religion.

Max Müller [1] defined religion as "a mental faculty which independent of, nay, in spite of sense and reason, enables man to apprehend the infinite under different names and under varying disguises." The influence of certain phases of the thought of India with which he was so thoroughly familiar is quite marked in this definition. Herein lies much of its value; the generalization is based on a wider range of facts. But the intellectual aspect is again too exclusively presented. The conflict between sense and reason on the one hand and the religious faculty on the other is too strongly emphasized to be universally true. And the very conception of religion as an apprehension of the infinite is, in spite of its popularity, open to the most serious objections. There is no evidence whatever, and not the slightest probability, that man in the earlier stages of his development was able to conceive of infinity, either as boundlessness in space, or as endlessness in time, or as exhaustlessness of energy, or as the negation of all limitations. Nor can it be plausibly affirmed that he had even a vague feeling of infinitude. All the analogies drawn from observation of the individual in infancy and early childhood, the mental processes of savages, and the oldest recorded utterances of civilized men suggest that primitive man had a sense of the bigness of the world in which he lived and the variety of things in it, but was quite incapable of either feeling or apprehending such an abstraction as infinity. When Max Müller [2] later modified his definition by limiting the apprehension of the infinite to "such manifestations as are able to influence the moral conduct of man," he failed to do justice to the unmistakable fact that religion and morals pursued somewhat independent courses through the earlier history of the human race.

Albert Réville [3] gave the following definition: "Religion is the determination of human life by the consciousness of a bond uniting the spirit of man to that mysterious spirit whose government of the world and of himself he recognizes, and with whom he loves to feel himself united." When the objective reality with which the human spirit enters into relations is described as a "mysterious spirit," it may be questioned whether the predicate "mysterious" does not

[1] *Lectures on the Origin and Growth of Religion, as illustrated by the Religions of India*, 1880, p. 23.
[2] *Physical Religion*, 1891, p. 294.
[3] *Prolégom`nes de l'histoire des religions*, 1886, p. 34.

introduce into the definition an element which entered man's religious life only at a comparatively late period as the result of reflection, and whether the term "spirit" does not exclude such a religion as Buddhism. It may also be doubted whether love is necessarily a part of religion. Tiele [1] distinguished between the forms in which religion is manifested, consisting of words and deeds and the constituents of religion, which are emotions, conceptions, and sentiments produced by contact with some higher being in whose power man feels and perceives himself to be, and with whom he longs to come into touch. The distinction is helpful; but it is difficult to see how, for example, a religion like Buddhism could be covered by this definition. Jastrow [2] defines religion as "the natural belief in a power or powers beyond our control, and upon whom we feel ourselves dependent; which belief and feeling prompt to organization, to specific acts, and to the regulation of conduct, with a view to establishing favorable relations between ourselves and the power or powers in question."

The present writer would define religion as *the consciousness of some power manifest in nature, determining man's destiny, and the ordering of his life in harmony with its demands.* "Consciousness" denotes both a feeling and a perception. The "power" may be conceived of as a personality or as a force or law, as unique or as one of a species. The manifestation in nature may be local or universal, temporary or permanent. The determination may be regarded as absolute or relative, as operating within or without, as having a moral character or being devoid of it. "Destiny" may be viewed as related to external condition, resulting from the action of this power, or internal condition, or both. The ordering of life may preeminently affect the inner disposition of the individual, the trend of his feelings, thoughts, and volitions, or the outward expressions, by word and deed, of a specific or a general character, or the social consciousness and its organized forms of expression. The "harmony" may be regarded as implying external conformity, or action prompted by subjective perception of the demands, and these "demands" may be conceived of as moral or non-moral, as arbitrary expressions of an individual will, or as the requirements implied in the cosmic order for the attainment of certain ends.

This definition appears to cover all the essential aspects of religion and all important phases of its historic manifestation. It leaves out the element of personal intercourse between man and some higher being, since this is not universally present in religion. And it applies to such a religion as Buddhism, which recognizes a law manifest in nature, revealed to him who is enlightened, imposing its authority

[1] *Elements of the Science of Religion*, 1899, vol. II, p. 1 ff.
[2] *The Study of Religion*, 1901, p. 171 ff.

upon him, operating within him, and redeeming him from desire, re-birth, and existence itself. It limits the term to certain phenomena of man's life, without denying the existence of the elements out of which religion has developed in the lower forms of animal life, or assuming to indicate the point in the process of evolution where a being may appropriately be designated man, or attempting to decide whether any individual of the species man is now or ever has been without religion.

The history of religion as thus defined, though a comparatively young discipline, has already been able to occupy and maintain some exceedingly important positions. There are numerous problems left for future generations to solve. But it may be doubted whether any of them will ever be of such fundamental importance or have such a revolutionary effect upon long-cherished beliefs as the conceptions now fairly established by historical theology.

The first of these fundamental conceptions is that *all religion has the same origin.* The distinction once made between natural and revealed religion can no longer be maintained. The claim to be based upon a special revelation is a common characteristic of practically all forms of religion. Every god reveals his will to his worshipers. The thought and the will of the particular divinity may be proclaimed by living voices only, or be written down and preserved in sacred books for the guidance of coming generations; but the written oracles are not essentially different from the spoken, and the sacred writings of one historic religion have no characteristics indicating for them a different origin from that of the holy books of any other religion. However strongly convinced Jews, Christians, Brahmins, Buddhists, Mazdayasnians, Mandaeans, Muslims, and others may be that their own sacred books have a character so different from all writings for which similar claims have been made, and so superior to them, that a common origin cannot be assumed, historical theology has demonstrated that they all register the development of man's religious consciousness in different times and places, and are the products of essentially the same mental processes. The history of every canon of scriptures shows how impossible it is to draw the circle within which the alleged special revelation is contained. The history of every form of religion shows how naturally the human mind operates with such conceptions as revelation and divine inspiration. It is readily seen that the claims of infallibility naturally made for all sacred writings are in every case without foundation. If, as is sometimes maintained, the originals of these writings were without errors, while such are found in our present copies, the number and character of these errors may seriously affect the value of the only texts to which we have any access, while there is no means of verifying a theory concerning the original copies which *a priori* lacks all plaus-

ibility. When recourse is had to a theory of divine accommodation, the facts are treated more respectfully, but they are left where they invite a more natural interpretation, and the divine "nature is subdued to what it works in, like the dyer's hand." If anything in religion is revealed, all is revealed. There is, indeed, no objection to the use of the term revelation if by it is meant the gradual unfolding of the truth to man's religious consciousness. But as long as it suggests an invidious and untenable distinction between different forms of religion, or a miraculous communication of truth to man, it is wise to avoid the term.

It has been held that there is an essential difference between ethnic religions and religions founded by eminent personalities in respect of their origin and character. Such religions as Buddhism, Mazdaism, Judaism, Christianity, and Islam have exercised so vast an influence in the world, presented so marked a contrast with the religions whence they departed, and have been to such a degree characterized by veneration for their founders, that they have been felt to be of a different order, having their origin not so much in the common tendencies of man's religious nature as in the inspiration, originality, and power of these mighty personalities. But this distinction is defective in two ways. It overestimates the originality of a few great religious leaders, and it fails to recognize the significance of the individual initiative in all forms of religion. The fact that great emphasis has been placed by devoted followers on a personal relation of reverence and obedience to such leaders as Gautama, Zarathushtra, Moses, Jesus, and Muhammad, amounting in the case of Gautama and Jesus to divine adoration and mystic fellowship, and that a mythical drapery has been placed about their majestic figures, seems to single them out as belonging to a special category of men, who, if they did not step directly from the sky bringing with them celestial light for those sitting in the darkness, at least drew from unfathomable depths within themselves things new and precious, fit to meet the spiritual needs of mankind for all time. But when the mythical and legendary element is removed and the historic facts are ascertained as nearly as possible, it is seen that these men builded upon foundations laid by others, and also that other builders followed them without whom their work would have been less permanent. It is then recognized that their reaction against prevailing tendencies and traditions was but a stronger impulse in the same direction in which myriads of other souls had moved, that they were only representatives of that progressive element, that centrifugal force, that tendency to vary from the type, which, in human history as elsewhere in nature, forms the counterpart and supplement of the conservative element, the centripetal force, the tendency to preserve the type.

A second fundamental conception of historical theology is that *all religion has a natural origin in the impression made by nature upon man and the sense of obligation.* The idea that all religion has the same origin, but that this origin is the supernatural revelation made to the first man, can no longer be entertained. There was no first man. By scarcely perceptible changes the animal was gradually transformed into a man, and the children are not likely at any time to have been so unlike their parents that the former could without hesitancy and with justice be called men, while the latter were designated as beasts. The various myths concerning the first man have no historic value, and there is no evidence that man in the lowest stages of his development cherished religious sentiments of such purity, and held religious conceptions of such adequacy, that they can only be accounted for by a miracle. The earliest records of civilized men in the valleys of the Nile and the Euphrates do not bear out the frequently made assertion that they were monotheists, or showed signs of being nearer to a pristine monotheism than their successors, and long ages lie between them and the dawn of human intelligence on our planet. There are no indications of the supposed primitive revelation.

Religion has a natural origin. The elements out of which it grew undoubtedly existed long before anything like the present type of man had been evolved. The immediate ancestors of man may be supposed, on account of their arboreal habits and the high development of their prehensile faculties by which it was possible for them to examine things closely, to have had extraordinarily vivid impressions of the objects around them and the play of nature's forces. The prolonged period of gestation and infancy had a tendency at once to develop the sense of dependence and the consciousness of the sexual life, while the gregarious instinct, evoked by inferior physical strength and superior mentality, aroused a keener sense of expediency and necessitated social adjustments. As the expedient course of action, commended by repeated trial, became the common law, a sense of obligation to follow it was engendered, and deviation from it was vaguely felt to be wrong. The religious consciousness seems to have arisen through a union of this sense of obligation, developed in social relations, with the feeling of dependence upon powers active in nature, such as beasts, reptiles, birds, and fishes, stones, mountains, plants, and trees, rain, hail, snow, and clouds, lightnings, sky, sun, moon, and stars. No distinction was, at the time of this union, made between animate and inanimate objects, body and spirit. Things were seen side by side on a horizontal plane, and not one above another in an ascending scale. They were man's kindred. Now one thing, now another impressed him with a feeling of being determined by it, of weakness and dependence, and led

him to seek to enter into relations with it of the same nature as those which he sustained to his closer kith and kin.

No essential element of religion is likely to have been wholly lacking even in the earliest efflorescence of the religious consciousness. A real animism, a conscious personification of natural objects and forces, had not yet been developed by reflective introspection and reasoning from analogy; but the failure to distinguish between animate and inanimate, human kind and other kinds, produced similar religious phenomena, and was the necessary condition for the growth of animism. There was no ancestral worship, for the conception of an ancestry was wanting and there was no reflection on a possible survival after death; but the relation of the younger to the older members of early human society and the memory of the dead prepared the way for the establishment of ancestral worship when the epoch-making generalization should be made from such phenomena as sleep, trance, and apparent death. Totemism was not yet, seeing that the idea of descent was unknown and the causal connection between sexual intercourse and pregnancy and childbirth is not likely to have been perceived; but the copulation with animals, from which it originated and which flourished into late historic times, must in the earliest ages have been widely prevalent. Tabuism is based on the conception of a special communicable sanctity, attaching to certain objects by virtue of their relation to the spirits worshiped, and rendering it unlawful to touch them or to use them for ordinary profane purposes. This is certainly an idea too advanced for the stage here considered; but the first step in this direction is taken when certain things become the objects of special religious consideration. Similarly, fetishism, which seems essentially to consist in the individual appropriation of a part of a sacred object, standing as the representative of the whole, and bringing all its virtues to the owner, implies a somewhat advanced mode of reasoning, though the fragrance remaining in a leaf taken from a flower, or the power of motion preserved in the tail of a reptile severed from the body, may easily have given rise to it. Magic, the experimental science of the savage, operates with the peculiar word by whose subtle power it can call forth and conjure the spirits, and the peculiar act by which extraordinary benefits may be derived from them. Its development is no doubt dependent upon the early growth of human speech, and though possibly not coeval with the awakening of the religious consciousness in man, it touches that epoch with some of its constituent elements. The roots of all these ideas and practices go back to the very origin of religion. They are likely to have extended through the major part of the long palæolithic age before the earliest tombs announce the new stage of religious development to which neolithic man has

advanced. A more definite date cannot at present be assigned by history to the origin of religion.

A third fundamental conception of historical theology is that *all religion is subject to the same laws of development.* It can find no exceptions. Whether the manifestations of the religious consciousness are of a high or a low order, they appear in their necessary causal connection with what precedes and what follows, in their proper place in the course of development determined by the operation of laws that are based on the constitution of the human mind and of the universe. These tendencies are discernible in the lowest stages of man's life known to us as well as in all subsequent stages. Hence the impossibility of indicating an absolute starting-point for the religious development, either in a particular idea or practice, or in a particular period.

The attempt to demonstrate that religion began with animism, or ancestral worship, or totemism, or worship of the celestial phenomena, or with the attention paid to any particular group of objects, has not been successful. It is indeed obvious that an intense occupation with the terrestrial powers constantly affecting man's life preceded an equally keen interest in the luminaries in the sky which are more remote and apparently have less concern about man. But the majestic object striding across the heaven in the light of the day, as well as the beings peopling the sky in the darkness of the night, and their struggles with clouds and other hostile powers, must have attracted man's attention long before the practical necessities of his developing social life made him aware of his dependence upon them. The analogies furnished by the infancy of the individual and the ideas of savages suggest that the religious consciousness of primitive man included a great variety of elements in rudimentary form, of which some found a fuller development in one race or physical environment, some in another.

This fundamental conception of a development according to law also implies that no historic phase of religion can have the character of finality. The claim to finality has been freely made, especially where the religious consciousness has, as it were, crystallized itself in laws, sacred writings, and creedal statements. These seem to say, "Thus far thou shalt go, and no farther!" The Vedas or the Tripitaka, the Avesta or the Torah, the New Testament or the Qur'an appear to fix the limits beyond which there is no further religious truth to discover and no higher religious life is possible. The veneration for a founder has a special tendency to foster the conviction that all religious truth must have been seen by him and that the religious development of his followers is but the unfolding of his thought. Historical theology has shown the fallacy of any such assumption. Christianity, for instance, has only one of its roots in

the thought and life of Jesus, and it is in a state of constant flux. In so far as it is possible to ascertain what Jesus said, and did, and was, his teaching and manner of life leave the impression of incalculable worth, but not of absolute finality.

The evolution of man's religious life is not along a straight line, so that it would be possible to declare "*post hoc ergo propter hoc.*" A subsequent phenomenon may be determined by a number of other factors beside the one from which it may seem to be immediately derived. The Yajur-Veda is unquestionably later than the Rig-Veda, but the religious ideas it contains are not to be explained as the natural development of those found in the earlier work, seeing that the change of physical environment from the valley of the Indus to that of the Ganges and the new racial element in the latter place seem to have entered in as modifying factors. In the development of Christianity, the genuine nucleus of the Pauline literature no doubt follows closely upon the very different type of faith held by the immediate disciples of Jesus; but the peculiarities of the former are not to be explained as having been derived from the latter, since they are manifestly due to a wholly divergent tendency of thought prevalent in the Greek-speaking branch of Jewry. Such phenomena do not in the least invalidate the conclusion as to the law-bound development of religious life.

So strongly intrenched is this conviction of a natural development in historical theology that it has to some extent been used as a means of determining the relative age of undated documents. In some striking instances such conclusions have been subsequently verified or confirmed by other indications of date. Thus there can be little doubt that the Hegelian conception of an historic development of religion according to the fixed laws that determine the unfolding of the ideal contents of human consciousness, led investigators of the Old Testament to the conviction that large sections of the Pentateuch were later than the great prophetic movement in Israel, or that the doctrine of evolution formulated as the result of biological studies exercised a determining influence in commending these conclusions to competent and independent students in more recent times. Yet they now rest upon philological, literary, and historical data sufficient in themselves to prove the contention. If it seems impossible at present to solve in a similar manner such a perplexing problem as that concerning the age of the Gathas and their relation to other parts of the Avesta, it is not because the principle is likely to render less service in this case, but because a chronologically fixed point is lacking, and because it is not known in what country the peculiar dialect of the Gathas was spoken. If it should become possible to prove that this was the speech of Bactria, where contact with India may at a comparatively early time have produced a type of thought

which in Adherbeijan can scarcely have appeared until much later, the place of the earliest part of the Avestan literature may yet be found through considerations drawn from the natural history of ideas.

There is, no doubt, in the evolution of religion, a general upward trend, caused by the growth of man's experience, the expansion of his knowledge, and the education of his sense of expediency. Advance in civilization invariably brings with it more adequate religious conceptions and more rational and profitable expressions of the religious consciousness. There is an unmistakable tendency away from polydemonism and polytheism to monolatry, monotheism, pantheism, and ethical monism, from myth-making to science, from religious sexualism to mysticism, from human and animal sacrifices to spiritual consecration, from magic and sacramentalism to the spontaneous symbolism of art, from a loose to a more and more intimate connection with morality. But the progress is not uniform. The growth is slower in some races and peoples than in others. There is degeneracy or reversion to earlier types. It is important, however, to observe that all apparent reversions to earlier forms of religion are not indications of real retrogression. Sometimes whole systems of thought and practice, having had their day of usefulness, loosen their hold upon the maturing religious consciousness, and there seems to be a return to the simpler forms prevalent before their development, while in reality there is an advance, the contents of the religious consciousness having been immeasurably enriched by the spiritual experience mediated through the very ideas and ceremonies which must at length pass away.

A fourth fundamental conception is that *all differences in religion are due to peculiarities of the physical environment, the psychical development, and the social conditions.* In spite of great distances in space, the absence of any ascertainable historic contact, and the most far-reaching racial differences, there are very marked similarities between peoples living in similar natural surroundings, as on the shores of the sea, on vast plains, or in mountain regions. Climate, vegetation, and animal life affect the character of men. The class of natural objects that chiefly attracts man's attention and arouses his religious feeling exercises substantially the same influence everywhere upon his ideas and customs. If the religion of the Polynesians resembles in some aspects that of the Greeks, it is because of the similarity of their physical environment. Peoples roaming in the desert do not worship the same gods as those that go down to the sea in ships, and men living in volcanic regions, terrified by eruptions and earthquakes, have a different religious outlook into the future from that of dwellers in a land rarely exposed to violent disturbances. The offerings to the gods are determined by the natural pro-

ducts of the land, and the character of these offerings affects not only the cult but the whole religious life.

If the mental development of a people is thus to a marked extent the reflection of the natural surroundings in which it lives, the individuals composing it show varying degrees of susceptibility to impressions by this environment. Just in proportion to the depth and variety of these impressions, and the consequent richness of the intellectual life, divergent types of thought and differing customs develop. These differences are reflected in the religious life. There is more variety of religious belief, more spontaneity and diversity of religious practice. Heresies and schisms are indications of religious vitality. It is not an accident that Syria, Greece, and Germany have been fruitful in new departures of religious thought, and particularly so in periods marked by intellectual progress in various directions.

If social conditions and institutions are unquestionably determined by physical environment and mental development, it is equally certain that they in turn exercise a profound influence upon the physical and intellectual growth of the individual, and consequently also upon his religious character, whether he yields more easily to the impression or reacts against it. The régime of tribal gods warring one with another is the natural complement of the tribal organization of society. The members of a small tribe may say unto their tutelary divinity, "Who among the gods is like unto thee?" And they may serve the god of their fathers with such intensity of devotion that to some extent they ignore all other gods. But they cannot cease to believe in the existence of other gods, or even degrade these gods into a lower class of beings, until the social development renders possible a broader outlook. This may come by the political organization of empires; it may also be brought about by the loosening of tribal connections through wider social contact. It is evident that the great Persian, Greek, and Roman empires had a tendency to lead religious thought to more transcendental and unitarian conceptions of divinity. The little gods fell from their thrones with the little kings and grouped themselves as servants around the celestial "king of kings." It is also obvious that the close contact between men of different blood, speech, and customs, within the same political organization, tended to force into the background the accidental in religion, the mere tribal peculiarities, however tenacious the resistance may have been here and there. As monarchical institutions yield to democracy, the religious life inevitably undergoes profound changes. When the rights of every man and woman to a share in the direction of public affairs become recognized, and the administration of public business becomes the work, not of rulers, but of servants chosen by the people for their fitness, the state gradually ceases to have an official cult, and to take cognizance of,

support, or suppress any form of religion. Religion becomes a strictly private affair. Social institutions such as warfare, slavery, capitalism, marriage and divorce, oath-taking, and others have exercised a very marked influence, not only on religious views, but also on the expressions in practical life of the religious feeling.

Significant as are the results which have been obtained by historical theology, the methods of this science are not less so. A higher degree of certainty concerning the facts of man's religious life in the past, a clearer discernment of the laws governing its historical development, and a surer forecast of the future depend upon the accuracy and efficiency of the methods that are employed.

These are the general methods of science applied to the history of religion. In this field they may be distinguished as historico-critical, comparative, and psychological. The historico-critical method gathers, sifts, and describes the theological material in so far as it reveals the growth of religion and the laws of its development. It finds this material in the realms of philology, archæology, literary documents, oral tradition, and folk-lore, and subjects its evidential value to searching scrutiny. On account of the excesses of some students, the philological method has been much discredited, but no amount of incidental error can invalidate the use of indications in human speech, such as names of divinities and cult-objects, in reconstructing the history of religion. For the earlier periods, we have no other direct testimony of man's religious conceptions than archæological remains, such as tombs, altars, dolmens, menhirs, and the like. In the study of literary documents, textual criticism is of fundamental importance, as false conclusions have frequently been drawn from texts that on closer examination have proved to be corrupt. But investigations as to date and authorship are also indispensable, since the value of testimony depends upon nearness in time and space and competence in perceiving and describing facts. In the case of uncivilized nations the evidence rests ultimately on oral statements and, so far as their history is concerned, on oral tradition. Much allowance must here be made for the medium through which the testimony comes. The same necessity applies to folk-lore. While there can be little doubt that it, to some extent, represents the disintegration of earlier myths and legends, the influence of the civilization in which they have in this form survived must be considered, and the production of new material resembling the old, without having any genetic connection with it, must not be overlooked. It is seldom that survivals of earlier religious conditions reveal their nature as clearly in a new environment as ideas and practices do where, for one cause or another, the religious development has been arrested or retarded.

The comparative method places side by side the different expres-

sions of the religious consciousness, notes their similarities and differences, and classifies them, in so far as by this process it seems possible to determine the growth of religion and the laws on which it is based. The comparison may extend to entire systems of religious thought and practice, or only to individual ideas, rites, institutions, or rules of conduct. In comparing and classifying those historic systems that have generally been called religions, much attention is given to the principle of classification. It is difficult to avoid artificiality in the selection of the most characteristic feature. In the course of its history each great religion has undergone so many important changes that what at one time seems the most significant characteristic at another time is no longer a peculiarly marked feature. There is no belief or ceremony in Christendom of which the formula *quod semper, ubique et ab omnibus* could be truthfully used. The differences between Denck and Luther, or between Martineau and Newman, were not more radical and far-reaching than those between Jesus and Paul. If Christianity were so defined as to make the leading ideas and practices of a Paul, an Augustine, an Aquinas, and a Luther its true exponents, the emphasis would be placed upon thoughts and customs foreign to Jesus himself. If, on the other hand, his convictions and manner of life were made the norm, the definition would exclude some of the most characteristic doctrines and rites of Christians since the first century. Similar difficulties are encountered in the case of Judaism. To make Judaism synonymous with Talmudic Rabbinism would not be correct, in view of the abundant evidence of strong currents in Israel's religious life setting in other directions, even if the ethical and religious elements in the Talmudic literature were accorded a juster and more adequate appreciation than is usually the case. And the Buddhism of Buddha is quite a different thing from the Buddhism of the Lama of Tibet. Yet though the task of classifying the different forms of religion is delicate and difficult, it is neither impossible nor unprofitable. When Brahmanism, Mazdaism, and Judaism are grouped together as legal religions, and Buddhism and Christianity as religions of redemption, any inadequacy in the classification is more than offset by the advantage of approaching these religions from a common point of view.

In comparing ideas and customs that show a marked similarity, though found in different nations, it is natural to suppose that one people has borrowed from another. Where historic contact can be proved or is likely, a considerable degree of probability often attaches to such an assumption. But in many cases, even where the resemblance is striking, the theory is both improbable and unnecessary, while in other cases the limitations of our historic knowledge renders a decision extremely precarious. Thus, to quote a few examples, there can scarcely be any doubt that the myths in Genesis

concerning the creation, the garden of the gods, the deluge, and the tower were derived by the Israelites from Babylonia; that some figures in later Jewish apocalyptic have the same origin; that the idea of a resurrection came to the Jews from Persia, and that the figures of Satan and some other demons, as well as the archangels, were developed under Persian influence; that the Christian Logos-idea came through Philo from Greek philosophy; and that Muhammad drew some of his ideas from Christian and Jewish sources. No such probability attaches to the conjectures that Varuna and some other Indian gods had a Semitic origin; that the Gathas were written under the influence of Greek thought; that the Christian gospels contain ideas borrowed directly from Buddhism; that there were in the Greek pantheon some originally Phœnician gods; that the great gods of Egypt during the Old Empire were identical with the chief divinities of Babylonia; that the author of *Völuspa* was familiar with Christian ideas; or that the religious conceptions of the American aborigines were derived from the Mongolians of Asia. Far greater difficulties are encountered when the attempt is made to determine such questions as the precise relations between Jainism and Buddhism, Mazdaism and the faith of the Iranians before the reform, the gods of the Semitic Babylonians and those of the Shumerians, the Baptists on the Jordan and those on the Euphrates, the Christology of the Parables of Enoch and that of the early church, the Christian and the Mithraic cult-societies, the reported beliefs of the Druids and Greek speculation, the tabus of the different groups of islands in the Pacific, and many others.

The more carefully the comparative method is applied, the more sparingly recourse is had to the theory of borrowing. Even where there is satisfactory evidence of an historic transfer of ideas or customs, distinction is made between the taking over of a mere suggestion subsequently developed in an original manner and a more extensive and unassimilated appropriation. The Greeks, for instance, put so completely the stamp of their own genius on what they borrowed that the ultimate origin cannot easily be detected, and the addition is often more significant than the material appropriated. A similar transformation may be seen in the case of the myths borrowed by the Hebrews from other peoples. But at present there is a strong reaction against the tendency of earlier interpreters to explain in this manner the occurrence in different places of substantially the same conceptions or practices. The similarities are more frequently accounted for by the similarity of the natural phenomena giving rise to the peculiar religious beliefs and of the social conditions reflected in the cult. The limitations of the human mind and the laws of its operation are such as to force it into certain channels; and the customs of human society dictate the forms of intercourse with divine

society. Methodical research finds such abundant testimony to this close connection of religion, in all its manifestations, with the mental development of man, and such clear indications of the general course of religious evolution determined by this growth of human faculty, that it is obliged to proceed on the assumption of the validity of the principle everywhere, even if the material should sometimes be insufficient for demonstration, or apparent exceptions present themselves.

The psychological method sets forth and seeks to explain the relation of the genesis and development of religion to the growth of man's sentient, intellectual, and moral life. The fields in which this method finds employment may be designated as child-psychology, folk-psychology, pathological psychology, and the psychology of genius. Much may be learned from observations of child-life concerning the earliest stages of man's religion. Man, the individual, runs quickly over the same course that is more slowly covered by man, the race, and the mental processes of the race in its childhood must have borne a close resemblance to those observable in the child. It is necessary, however, to make allowance both for ancestry and immediate environment. The psychical phenomena of collective life which come nearest to those of childhood are presented by peoples whose development, through unfavorable circumstances, has been retarded. Here again the results of degeneracy must be sharply distinguished from survivals. When more advanced religious organizations, whether they be states with an official creed and cult or purely cult-societies, are studied in their relations to the general mental development, it is important to note the æsthetic and ethical phases as well as the intellectual, and to observe the tendency of tradition to incorporate and assimilate new ideas and practices, after testing their practical effect, as well as its tendency to conserve the past and to resist novelties when they arise. The obvious connection between some phases of religion and a conception of the universe based on the defective generalizations of astrology does not lead the careful student to the hasty conclusion that either priest or astrologer must have been guilty of a conscious and intentional fraud. There is no more reason to doubt the sincerity of conviction and intellectual and moral integrity of the average soothsayer, priest, magician, or witch of the past than of the average official representative of any modern religious cult.

Among the types of religious experience deviating from the ordinary forms there are those that may be regarded as due to morbid physical and psychical conditions, and there are others that are due to the extraordinary development of the faculties which find expression in the religious life. Unquestionably, hysteria, melancholia, catalepsy, epilepsy, trances, and hallucinations have played

an important rôle in the history of religion. It is all the more necessary to investigate those pathological conditions in their relation to the religious sensibilities, as some of the most important forward movements in religion have been connected with such psychical manifestations. The keen sensibility, protracted reflection, warm sympathy, great reverence, and marked freedom. characteristic of religious genius, sometimes produce effects that to a superficial observer may seem to betray the same morbid concentration, while a more methodical study tends to show that the sanest expressions of the religious life are to be found in the great prophetic order of mankind.

Not less important than the methods employed is the mental attitude of the investigator. In fact, his disposition is itself a means of advancing or retarding scientific progress. A wrong bias of the historian's mind will inevitably affect the results, even if there is the appearance of a correct scientific method. To reach legitimate conclusions, the student of the history of religion must cultivate a frame of mind characterized by sympathy, reverence, and freedom. Without a fellow-feeling enabling him to put himself in another man's place, look at the world through his eyes, experience something of his sensations, and feel an involuntary prompting to join in his acts, his religious life will be a sealed book. Sympathy alone gives insight; and this sympathy must be comprehensive as well as deep and genuine. In order to interpret rightly the manifold varieties of religious experience, one must be able to sympathize with the priest and the devotee, as well as with the prophet and the philosopher.

Nor is it sufficient that this sympathy should be the consciousness of a common religious life, which might be nothing but the fellowship of prisoners in the same jail or inmates in the same hospital. There must be a sense of reverence, a feeling of the worth of religion even in its humblest manifestations. Such reverence does not imply respect or admiration for the absurd and the grotesque, for ideas and customs out of harmony with the civilization in which they maintain themselves as useless or harmful superstitions. The immaturity of infancy in the individual or the race is not to be despised; puerility in the man and the survivals of crude notions and senseless customs in an advanced civilization may be legitimate cause for pity or laughter. But true reverence prompts a student to approach the realm of religion as holy ground where man's sense of the highest in life has found its preëminent expression.

Yet the judgment of the historian would be sadly warped, if he should allow his sympathy and reverence to deprive him of his freedom. There is nothing so sacred in the universe that the mind of man has not the right to touch it. Without hesitancy the true

historian of religion will trespass on forbidden grounds and search through all mysteries. He cannot be the slave of a school, the advocate of a sect, or the apologist for a religion. He must be free to treat objectively, yet sympathetically and reverently, the growth of the religious consciousness.

The historian is too painfully aware of the fragmentariness of his knowledge of the past, though it is vocal with innumerable voices bearing witness to its life, to venture readily upon prediction of the silent future of which no man can testify. The history of prophecy shows him how hazardous it is to try to rend the veil of the future in order to reveal events that will occur or personalities that will appear in ages to come. Even the wisest of prophets have failed when they endeavored to clothe in flesh and blood their waking dreams. Yet ignorance has its limitations as well as knowledge. If a man should affirm that his ignorance is such that he cannot deny the possibility of every Roman Catholic becoming a Protestant, or every Buddhist a Christian, before another day shall dawn, his claim to ignorance would not be respected. The Church of Rome was not built in one day, and it is perfectly safe to predict that it will not perish in one day by the conversion of all its members to another faith; and the same is true of Buddhism.

Certain things may be predicted, with a reasonable degree of assurance, in regard to the future of man's religion, and the historian, watching the evolution of the religious consciousness and seeking to discern its laws, is more likely than any other man to take a deep and intelligent interest in what may be divined concerning that future. The remnants of primitive conceptions are disappearing so fast by the spread of civilization that the time cannot be far off when they shall have ceased to play a part in religion. Polydemonism and polytheism are giving place to monotheism, and the trend is away from transcendental monotheism to pantheism or ethical monism. New mythologies are not developing, and the old myths vanish as science advances. Human sacrifices are extremely rare, and animal sacrifices are gradually disappearing. The magical conceptions surviving in the cult are giving way to a symbolism that seeks satisfaction for the artistic and ethical instincts. Even where sacred washings, sacred meals, sacred days, and sacred places are still recognized, their significance is differently understood, and the tendency to abandon them altogether is marked. The emphasis is being placed, not on dogma or cult, but on the ethical contents of religion.

The growing importance of commerce and industry, art, science, and philosophy, the general secularization of life, may seem to indicate that religion in the future will exercise an ever-diminishing influence on man. But the interest which looms up as without comparison the strongest in the life of modern man is big with relig-

ious import. When millions of men ardently desire and earnestly strive for a better adjustment of social relations, a more equitable distribution of wealth, the abolition of war, the enfranchisement of woman, the prevention and cure of disease, universal education, religious toleration and good will among men, religion has nothing to fear. As the Reformation followed in the wake of humanism, with its emancipation of the mind and sympathy for classical antiquity, so the social idealism of the present day, with its larger ethical ideals and universal human sympathies, seems to prognosticate a fresh outflowering of the religious consciousness into harmony with the moral demands of that infinite power which determines man's destiny.

SECTION A — BRAHMANISM AND BUDDHISM

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(*Hall* 8, *September* 23, 10 *a. m.*)

SPEAKERS: PROFESSOR HERMANN OLDENBERG, University of Kiel.
PROFESSOR MAURICE BLOOMFIELD, Johns Hopkins University.
SECRETARY: DR. REGINALD C. ROBBINS, Harvard University.

THE RELATIONS OF THE RELIGIONS OF ANCIENT INDIA TO THE SCIENCE OF RELIGION

BY HERMANN OLDENBERG

(*Translated from the German by Prof. E. W. Bagster-Collins, Columbia University*)

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I

IN this paper I shall attempt to answer for my own theme those questions which this Congress puts to the representatives of every science. What relation does the investigation of the religions of ancient India bear to other allied branches of research and to the science of religion as a whole?

Before, however, tracing the lines of connection that carry us beyond the boundaries of our own province, I dare not, self-evident as this may seem, fail to mention the fact that a large part of our scientific labor has to be carried on within its own domain, so to speak, for itself alone. Like all historians, we investigate individual forms that are never again identically repeated. At the most they are only similar. Our first desire is, then, not to compare these forms with others, nor to subordinate them to general formulas. We wish, rather, to grasp their meaning truly and fully as if they were independent. Everywhere in the study of history there is to-day a mighty force that impels the student to search for the incommensurable, the elemental in the lives of nations as well as of individuals. And perhaps in few fields of historical investigation is this feature naturally so strongly accentuated as in our own. The people

of ancient India occupy a unique position among the peoples of antiquity; the Indian spirit goes on willfully and obstinately its own strange ways. Is it wonderful, then, that there is among Indian scholars a widespread desire not to introduce non-Indian elements in any consideration of Indian life and thought? "India for the Indians!" Indeed, we should never really accustom ourselves to the peculiar modes of Indian thought, our sympathy for the Indian soul would always lack depth, if we did not understand how to keep aloof all foreign issues. And how is the historian to set aside this feeling of sympathy? Let him remember the words of Faust, "my own self to them extend." Let him live in his imagination the glowing fantasies of the Indian religion, long for the peace of Nirvana with the longing of Buddhism. Let him experience the tragedy of the conflict of the two souls in the breast of the Indian people, the one Aryan and noble, the other humble and wild. And if all this seems to take place far away from our own world, just for this reason our growing familiarity with regions so distant may come to have a peculiar charm.

Are all demands that we make of our work met in this manner? Certainly not. We have restricted the field of vision more than the nature of the case really justifies. We do not regret it; it has been an advantage. Now, however, something else remains to be done. In the attempt to study deeply any one individual thing, we must not forget that it is but one part of an all-embracing whole. It is a part that has developed into very independent directions. It still remains, however, a part of the whole. In order to understand it as such, there is need of the comparative, systematic, and far-seeing kind of research that finds lines of connection everywhere. To what extent can such work be mastered by one and the same scholar, who has become absorbed in the limited field? Must there be a division of labor? This is a personal question that concerns scientists more than the science itself. Science merely commands that, no matter by what hands, both kinds of work shall be done.

II

Gates leading abroad are not wanting, you see, in the boundary walls of our province. In order to discover the roads leading out from them, however, we must first of all call to mind the dominating event in the history of ancient India that prescribes the directions that many of these roads shall take; namely, the migration of the Aryans to India. These races, related as their language shows, to the great European peoples, indeed forming in the distant past one people with them, came in their long wanderings from the northwest. For a long time they sat at the gates of India, in

Iran. A part of them remained there, — the ancestors of the Iranians that later assembled about Zoroaster, Cyrus, and Darius. Others crossed the mountains and wrested northern India from the dark-skinned aborigines.

These facts are well known. We have to gather from them, however, for the questions with which we are concerned, first and foremost the fact that the religious beliefs brought by these wanderers into India must have left such a prehistoric impress as to direct the Indologist's attention beyond India, and as to induce the investigator of non-Indian religions to include Indian conditions in his researches.

The comparative philologist, aided by eminent Sanskrit scholars, has undertaken the task of reconstructing the long since lost language of the parent-stock of the Indians, Iranians, Greeks, Italians, Celts, Germans, Slavs — in a word, of the Indo-Europeans. Do the religion and mythology of India and the corresponding European forms lend themselves to similar comparisons? Taking India for instance as a starting-point, can we learn the nature of the religion of the Indo-European period, and, if we again go back from the standpoint thus gained, can we discover the origin of the old Indian and European religions? It is undoubtedly justifiable in principle to ask such questions. Yet when we speak of such investigations, it usually means nothing more than looking back upon illusions that are and had to be things of the past. This is, at least, my own firm conviction, and it is also shared by many others.

The time is past when the Vedic scholar was also the comparative mythologist. Religious ideas are naturally subjected to many more indeterminable transformations than languages. The process of change from the Vedic gods to Apollo or Mars cannot be so clearly pictured as the changes, say, from the Indian to the Greek and Latin sibilants or optative forms. Even that objective certainty based upon ancient monuments that is shared by many other branches of comparative research dealing with antiquity is wanting. Moreover, the unfavorable aspect of the whole problem is bound up with the question as to the position of the Indo-European mother country. At one time this was thought to be in Central Asia: the Indians did not seem to be very far distant; they could in many respects be regarded almost as the representatives of the Indo-Europeans themselves. But we have come to see that that earliest home was very probably situated in Europe. What distances between that home and Vedic India, what contact of the wanderers with strange peoples of different origin, what unavoidable, and for us, incalculable race-mixture, what changes in economic and social conditions! Middle and North-European, Germanic and Lithuanian data would, we must now assume, teach us more and surer

facts than the Veda, provided we possessed similar data of approximately as great antiquity. Nevertheless the comparisons that have been drawn between India and Europe have not been quite without success. We may even to-day regard it as certain as well as important that the comparison of the old Indian word *deva*, "god," with the corresponding words of the Occident, and the relationship of this word with *dyaus* (=Zeus), "the sky," gives us the right to attribute to the Indo-Europeans the conception of gods as bright beings, living in the high heavens. On the other hand, most of the attempted comparisons of individual gods, demons, and myths are uncertain, even if not actually false. Do similarities of sound in names and faint similarities between forms really point to each other from such a distance? Or do mere chance resemblances deceive us? They furnish results that one may believe, if one wills, but no proof compels one to believe them. They are results that one will dare least of all make the basis for further investigations. How different the comparisons seem to us to-day that are confined to the religions of the ancient Indians and the neighboring closely related Aryans, the Iranian Zoroastrians, as against the rash combinations that would teach us to interpret, in the light of the Veda, the whole series of European forms from the Olympus of Homer to German folk-lore and children's games! The distances in time, space, and race-mixture necessary to be bridged over were just as great in the latter case as they are insignificant in the former. Proportionately better success must necessarily attend the less pretentious undertaking.

Indeed, I dare assert that it has become possible, by the happy alliance between Indian and Iranian investigation of religions, to reconstruct many of the principal features of the belief peculiar to the ancestors of both peoples in their prehistoric relationship. The chief rôle falls naturally here to Indian investigation. For the common basis of their belief is more distinctly evident in Indian traditions. The migration of the Indian Aryans to their new land, the beginnings of new race-formations that were gradually to transform the Aryan belief here most deeply, only just began to be felt even in the Vedic period. The stronger creative forces left their impress at first upon the Zoroastrian religion, — the thought and will of a great personality. Yet enough of the old still remains also on this side to assure the Vedic scholar, in coöperation with Iranian scholars, of many a valuable result for his own purposes. Above all, he may rejoice in the fact that he is able to make an important contribution here to the knowledge of a non-Indian religion. He teaches the investigator of the Avesta the background of the old belief, from which the teaching of Zoroaster stands out in bold relief.

III

We can sum up the investigations thus far mentioned by saying that students of ancient, related religions endeavor by their comparisons to extend the knowledge of direct tradition backwards into prehistoric periods. It is of course quite evident that a much brighter light falls upon fields that lie nearer historic times than upon the more remote past. It may accordingly appear for a moment paradoxical to speak of pressing back still farther, and to assert that the certainty of our undertaking not only does not any longer diminish; on the contrary it begins to increase. The certainty increases because we are dealing with those prehistoric periods when the play of racial individualities has not yet become unfathomable, but a kind of law with which we can reckon, which everywhere produces like forms.

I am now speaking of scientific movements that are still in their infancy. I am well aware that many an investigator of great authority does not share my conclusions. I can only voice my own conviction; the future must decide whether it be right or not.

The young science of ethnology carries us back to primitive forms of religions, far beyond Indo-European conditions. From it we learn, as you know, that certain rudest types of religious conceptions and practices are found everywhere among peoples of the same low level of civilization in apparently wonderful though undoubted agreement. Religious research here assumes somewhat the attitude of the natural science. What it reports does not differ much from a chapter taken from the life of animals. A further inference has been drawn from the above-mentioned agreement. It is not less widely known that these very same primitive forms must have been the basis, likewise, of all higher forms of religion in the distant past. Hence the investigation of Indian religions is clearly placed in new and very far-reaching relations. If it formerly carried on a coasting-trade, so to speak, it must now venture out upon the high seas. It ventures to make comparisons that are no longer restricted to the Indo-European field. It throws aside for a time the tools of comparative grammar, the time-honored technique of philology, and leaps over boundary lines usually set for the routine work of the science. In order to discover the greatest antiquity, it studies the present. It accompanies the journeys of the traveler among the Red Indians, Kaffirs, Australians, and those less pretentious travels of discovery among those classes of our own people, where so many primitive modes of thought are found even to-day. It then searches in its own field for the primitive religious forms that it found there. We find the same impulse here as everywhere in historical science, and also in art, — to put new life into the old material and the old

problems, by letting the light of present day illumine the world of books and traditions. We are not the first in this field of research. I call to mind the much lamented names of two masters. Erwin Rohde studied Greek religious beliefs, Robertson Smith the religious cult of the Semites. Our science has also begun this bold though possible task, and we may even now say that results have been attained; and also, of course, an outlook upon new problems that formerly were not raised, could not be raised. For, if anywhere, the words,

> To riddle after riddle we the answers read,

find the inevitable reply,

> To riddles new each time the answers lead.

The elements of the religion of ancient India that have been brought into the right perspective with the aid of ethnology, usually differ, as one might expect, from those with which the comparative studies of Indo-Germanic scholars dealt. There is little here about gods and heroes, of rich poetic myths. We are dealing with the low, the crude, and the uncouth; with kobolds and demons, with the worship of the dead, with fetishism and magic, with the grotesque, which, when we learn to understand it, ceases to be grotesque. As we find such universal human forms again in the Veda, some of the barriers that seemed to isolate this from the outer world fall down. The student of the Veda, having taken up the relations I have attempted to describe, learns how a prehistoric form fuses with higher religious forms, envelops itself in them, transforms itself into them and broadens itself out into them. He learns to see in the priest, the medicine-man, in many a sacrifice, in some old incantation for rain, in the pious symbolism of burial customs, the pale terror of the savage at the treacherous, avaricious soul of the dead. He resolves conceptions and customs occurring side by side in the texts into a sequence of the old and the new, the beginnings of which lie perhaps thousands of years apart. It is as if we were walking through a city and gradually discovered, behind the at first apparently uniform exterior, the mighty remains of a distant past, the late additions merely adhering to the old. If in order to shed light upon these relations, our investigations can by chance make use of materials that lie infinitely removed in space and time from our own field of research, who would blame us for rejoicing at the bold indirectness of such an attempt? The Indologist can here no longer claim for himself, as formerly, in comparative mythology the leading part. It is not for him to teach the ethnologist, but to learn from him, concerning the appearance and significance of the lower mythological and religious forms. Undoubtedly he contributes his share to

the huge collection of material with which ethnology must work, and I believe that that science rightly appreciates this fact. But on the whole, he plays the role of the recipient. For some time to come he will make many a blunder in sifting and working over that which he appropriates to himself. Where such distant vistas have been opened up to research, as in this case, one's vision must necessarily often become distorted. This does no harm. He is faint-hearted who does not have faith that our very mistakes will bring us nearer the truth.

IV

Let us now turn from the prehistoric relations which students of Indian religions are engaged in interpreting to historic times. The wanderings of the Aryans have come to an end. The old tribal relations have been broken up. Boundaries have been made that frustrate every attempt to treat the history of ancient India as merging into a general history of antiquity. Still such boundaries do not exclude the existence of some intercourse at the frontier. Even over greater distances there was for centuries, by land and by water, a never wholly interrupted intercourse between India and the outer world. What religious possessions has this intercourse borne hither and thither?

When one simply expresses such a question, it suggests the varied relations in which Indology must stand to all allied branches of scientific inquiry. No single individual can grasp all this. It is not the result of any undervaluation of the investigations in question, but only the feeling of my own insufficiency, if I do not call to mind many things. What problems does the quick and brilliant development of Assyriology set for us? What questions arise from the estimation of the mighty influences of Brahmanism, and particularly Buddhism upon Central Asia, farther India, and China? I cannot trace these tendencies; I shall only speak of a few problems that deal with a world closer at hand.

Both Indologists and students of Greek philosophy we find examining the question whether the teachings of Pythagoras show traces of Indian influence, as a daring and ably defended recent hypothesis maintains, and whether, many centuries later, Indian sages and thaumaturgs likewise had a share in the varied and confused influences of Oriental mysticism that are found in the writings of the neo-Platonists. In another field there is a problem that may arouse us still more: How can we account for the similarities between the narratives and speeches of the four Gospels and those of the Buddhists? The story of Jesus in the temple, the encomium of Simeon — are they constructed from the story of the wise old man Asita, who approaches

the child Buddha and praises his coming glory? The temptation of Jesus in the wilderness and the temptation of Buddha in solitude by Mara the evil one, the walking of Peter on the sea, the widow's mite, the parable of the prodigal son and the corresponding Buddhistic parallels, — what is one to think about all this? Have features been really added to the picture of Christ by the contemplative imagination of the disciples of Buddha living in the monks' abodes along the Ganges? Important as these questions are, I naturally have no intention of discussing them here. I merely wish to describe how Indology joins forces with other branches of research in their solution. I desire only to emphasize the following point. When the problem is to determine the possible influence of an Indian prototype upon any non-Indian circle of ideas, Indology can never do more than contribute to forming the decision. The decision itself can be reached only within the province covered by the other science. The Indian scholar will determine that the Indian prototype in question has such and such a form and goes, or can go, back to such and such a time. The fellow worker will likewise ascertain corresponding facts regarding the phenomenon that may eventually be regarded as an imitation. When these preliminary questions have been settled, there then begins the more subtile investigation, which in cases of this kind does not really come within the sphere of Indology. Does the civilization which is so claimed to be influenced, for example the early Christian, present within itself the conditions by which the phenomena in question can be adequately explained without assuming derivation? Does the configuration of the forms disclose any abnormalities, erosions, joints, fissures, that might give weight to the opinion that foreign elements have been mingled? Then there still remains the question, in case such an admixture is to be assumed, whether it must be derived precisely from India. The peculiar trend of his imagination, I might almost say a kind of subconscious patriotism, all too easily drives the Indologist to this conclusion. The investigator of a particular field possesses a vivid knowledge of this field alone. Almost inevitably his scales must tip in favor of his own subject, when different ones are claiming to be the point of departure of some historical movement.

In these last sentences I have touched upon a peculiarity of these investigations which I must not neglect; namely, the subjectivity of the critic and his scientific temperament are wont to play here a particularly dangerous rôle. We see students, on the one hand, grasping with ready faith at every similarity between widely separated facts and constantly finding traces of historical relationships. The phlegmatic are also not wanting. They are filled with the greatest mistrust whenever they are expected to risk a leap or even a step from one sphere of civilization to another. The more anxiously, however,

one tries to avoid one or the other failing, the oftener one arrives at a *non liquet* as his final decision. The cases in which objective criteria help us out of this uncertainty are not very frequent, and unfortunately often these prove to be not really the important ones.

Thus, for example, I fear that the question regarding the relations between the New Testament and Buddhism belongs to those that do not admit of an absolute yes or no. I myself can of course not speak here with the authority of the specialist. Only a high authority on the New Testament can shoulder the responsibility of deciding this case. Still, my subjective impression is that nothing in the four Gospels necessarily points to any real borrowing from India. There is hardly more than inner parallelism with Buddhism. A prominent Indologist said a short time ago that just as "Babel" now knocks noisily at the gates of the Old Testament, so Buddha knocks, gently, at the door of the New Testament. Certainly any one who examines the later periods of early Christian literature hears such knocking now and then. Even the dullest ear can hear it repeated in the medieval Christian tale of *Barlaam and Josaphat*, the whole history of the youth of the royal son of the house of Sakya. But Buddha scarcely seems to me to knock at the gates of the New Testament.

The results of the investigations are similar, when we examine whether Christianity, in turn, has influenced ancient Indian forms of religion, the Krishna religion, for example. When we are dealing with influences coming from the opposite direction, from west to east, as in this case, the leading part falls to Indology, for the reasons I have already mentioned. Even here, however, the outcome, partially at least, is quite uncertain. Even if the wonderful poem *Bhagavad Gita* sings that the belief and love of the pious man look towards the god incarnate, even if the divine Krishna says there, "Whoever loves me is not lost," I for one should not like to assert positively that Christian influences are in evidence. It seems to me that the thought expressed in the *Bhagavad Gita* is everywhere in accord with Indian thought in its development. Even here, again, the later texts show us another picture. We find a kind of Christmas-cult consecrated to the birth of the child Krishna. We come across stories of the new-born god incarnate in a stable; shepherds and shepherdesses are gathered round the blessed mother; even "the ox and the ass" are present. Such facts will, of course, silence even great skepticism.

Let us look backward. Can we conceal from ourselves the fact that when Indology, together with classical philology, or with New Testament research, treats such problems of derivation, the results are rather meagre? What does the holy martyr Josaphat signify for Christianity, or the idyl of the Krishna child for Hinduism? It is well to record scrupulously such borrowings; the amateur may, with

pleasure, take in them the interest of the collector in a rare find. The historian, however, who seeks for the essential in things, will surely not feel so enthusiastic. Even if any of the New Testament narratives should really show evidences of Buddhistic influence, although I doubt it very much personally, the picture of Christianity would probably not be affected in the very slightest degree. We are aware that there was great mingling of religious elements of most varied origin in the last centuries before and the first centuries after Christ, — Grecian, Egyptian, Jewish, Babylonian, and Persian. India was not separated from these movements by impassable barriers; still it was so remote that it could have had only a minor share in them.

V

We have now reviewed all the prehistoric as well as historic relations. Have we, however, really exhausted thereby all that the study of Indian religions has to offer to the whole science? We have found the results obtained with regard to the belief of the Indo-Europeans both few and unsafe, the extent of the Indo-Iranian relationship narrowly restricted. We have found ethnology more often our creditor than our debtor. Furthermore, the remoteness of the civilizations of Central Asia and the farthest East that were influenced by India and the insignificance of the religious exchange with the West, — does all this form an adequate basis for determining the importance that the study of the religions of India has for understanding the world in which we live? Certainly not. Whether the study of Buddhism, for example, possesses a universal significance over and above its own special one, cannot depend upon whether a few stories from the great wealth of Buddhistic legends may have found their way into Christian literature. We are not dealing here with mere chance, external correspondences, but with inner relations.

Here and there we find analogous and yet different forces working on a similar yet different soil. These produce analogous yet different forms. We shall certainly refrain from speaking as if a fixed law, in the full sense of the term, were conceivable, or as if history were simply a collection of forms that naturally fit into a symmetrical system already discovered or yet to be discovered. Nevertheless the substantial identity that I have already mentioned, that we find in the lowest forms of civilization of which ethnology teaches, can certainly not be absolutely lost in the higher phases of history, in such differentiations as progress produces among the more highly organized, less inert forms. The identity of the former case becomes here a certain though often very limited parallelism. Parallelism, however, means neither more nor less than law and order. And

indeed we may say that, for many stages of the way across the vast historical tracts, even now a gleam of law and order rewards the patient observation of the scientist and the intuition of the genius. It is an order whose constant fusion with its opposite, with what is plainly mere chance and inexplicable, is one of the leading characteristics of historical development.

The comparative study of languages and literatures, of judicial and social life, proves that it is possible to find many a trace of law and order. Why should it not prove to be equally true of the history of religions? Like helps to understand like from east to west. It aids in recognizing the hidden traces, in reconstructing the fragments, just as it is possible for a reader who is acquainted with a large number of careers and mental developments to construct a whole life from fragmentary biographical data. Such comparisons likewise help us particularly to discover the principal active causes behind the facts themselves. The similarities as well as the dissimilarities are helpful. Our view broadens so as to include the whole wealth of possibilities. The single fact takes its rightful place by showing itself to be one variety among others. We learn to raise the question, even solve it, perhaps, as to what causes have given each fact its peculiar characteristics.

Whoever pursues such problems will find Indian traditions especially valuable for much that is included under the head of religious thought and life. They are wonderfully preserved in true Indian vastness. It is a primeval forest through which, however, the steadfast zeal of the philologian has succeeded in making paths. The oldest traditions go back to a very remote past; they appear scarcely younger than the Indian people themselves. Moreover, tradition, ever communicative and frank, helps us to trace the long development through thousands and thousands of years. We believe we see in the texts before our eyes how their conception of nature and the world, reflected in their religion, develops step by step. We see how the art of presenting problems which creates this knowledge, how the direct or the indirect relation of the knower to his knowledge passes through one phase after another. Above all we hear what needs, hopes, and longings are expressed one after another in rational order. Particularly the older *stadia* of this development lie wonderfully clear before us; namely, the progress from the half-naïve, half-artful religious cult of the Veda to the deep speculations of the Upanishads, then to the religion of salvation of the Buddha. This process, hardly influenced at all from without, has been able to go on according to its inherent law. Why should it not help us to understand the parallel developments in the West in the sense that I have designated? The student learns at every step, I may say, that this is not a deceptive hope. For instance, let us consider the sacrifice,

an historical problem broad in scope. What forces, what thoughts have been set in motion here during these thousands of years! The forms, however, in which the sacrifice appears are at first incomprehensible hieroglyphics; our task is to decipher them Nowhere do we find such exhaustive details regarding the sacrifice as in ancient India, especially the period of its richest maturity, to which it had been brought by the long labors of the priestly caste. How much more clearly we see the Vedic Brahman exercising his office than the Roman Flamen, for instance! Accordingly, I think, and the results already obtained bear me out, that any one who desires to reconstruct and interpret the remains of Western sacrificial rites and ceremonies must get his inspiration above all from India. Indian tradition is just as instructive, if one attempts to get a glimpse of how those tendencies that incline toward uniting religion and morals forced their way into the old mass of religious ideas, that were rather indifferent to moral ideals. It would be an endless task, however, to indicate all similar problems. We should meet with the same experience in every case; namely, that the Vedic religion, both by virtue of its historic position and its magnificent state of preservation, offers unparalleled opportunities for study to any one who desires to penetrate to the heart, to the very foundations of those old religions, religions with an old and crude basis, with the creations of riper thought and feeling above, and finally, we may add, with the seeds just visible of a still riper, more perfect future growth.

I should like to illustrate still further the importance of the Indian religions for the general problems of the science of religion by mentioning one form that appears later than the Vedic period. Buddhism represents to us one of the highest forms of religion. Buddhism and Christianity have long since seemed to be comparable to the mind that seeks to bring harmony into the bewildering religious phenomena. They are the most powerful religions of the East and West. Both are world-religions having no national boundaries. Both are religions teaching salvation, breaking all restrictions set by ceremony or law. The same type of religion of salvation — thus the relation has been formulated — has been realized twice in the history of the world, in the West by Christianity, and in the East by Buddhism.

It is quite evident how great the interests of the science of religion are in a discussion of this scheme. The student of Buddhism will, however, appreciate the fact that he and his fellow worker in the New Testament will not of themselves be able to make such a discussion possible. A third must help, — the student of Greek thought. It is known how nearly related to Buddhism are the ideas that flourished in certain old Grecian religious orders and schools of

philosophy, and are even found here and there in Plato. Comparison with Buddhism offers the best means of approaching and understanding these ideas. The earthly existence seems to these Greeks, as to Buddhists, to be shrouded in darkness. The soul has fallen from its true home into "life without life," into an impermanent world. As in Buddhism, suffering lasts indefinitely in the wanderings of the soul, in which it "exchanges life's painful paths one for another." But like Buddha the wise man recognizes and points out the "way to salvation." He teaches the art of freeing one's self from bodily existence. Knowledge and philosophy lead the spirit to the bliss that Plato extols. In a sudden vision the eternal one, that ever is, beams upon him, and into union with him he enters freed of all fetters, just as the blessed certainty of Nirvana illumined the son of Sakya in the holy night: "Destroyed is the rebirth, fulfilled the holy change and duty done; I shall not return to the world again."

The national differences between the two peoples are of course clearly seen when one more closely examines these ideas. How could it be otherwise? Yet after all, the harmony is wonderful with which the voices of the Greek thinkers answer the yellow-robed Indian monks. It reminds one almost of those correspondences that we saw ethnology finds between the ideas of peoples most widely separated. There lies the same haze of vague forebodings over both these ideal worlds, the Grecian as well as the Indian. There is the same longing for the cessation of motion, of becoming and change. With it sounds of triumph are mingled: the proud consciousness of one's own power to call a halt to that motion. And this implies that we must never oppose to one another these moods as peculiarly Indian or Christian. They are certainly not Indian alone. Allied Indian and Grecian research teaches that they are the products of forces that do not belong to simply one country. Accordingly the necessary basis has now been given the science of religion for investigating these forces; namely, how far do they agree with, and how far do they differ from, those which have produced Christianity?

Perhaps the differences will first strike the eye. On the one hand, in India and Greece, we have the wise man who, through his knowledge of the nature of the world and the workings of the universal law, rises above the suffering that it brings him; on the other hand, in Christianity, the pious man who, though poor in spirit, clings to the mercy of the all-loving God with childlike confidence. On the one hand, the final goal as conceived by a mind accustomed to metaphysical abstractions, as rest freed from all "becoming" in the realms of "ideas" or those places

> Where there is no being, nothing firm, in the isle, the only —

of Nirvana. On the other hand, the blessed hope of spirits longing for life, the transfiguration of a most living, most personal existence perfecting itself in God. We have here the sharp antitheses that appear doubly sharp compared with the harmony between Indian and Greek modes of thought. Who would wish to obscure them? But it is not obscuring them when we ask whether, in spite of differences of race, civilization, temperament, powers of imagination, complexity or simplicity of thought, it is not after all the same longing, here as there, a longing originating in the depths of the soul for the world beyond. It is a longing for the "far off," to leave the dullness of the world and life of the senses for the freest, brightest heights. The hand that was once eagerly and rudely stretched out after worldly goods has been drawn back. One dreams of the inexpressible, whose secrets one must perforce call by many ever changing names. It sounds in the souls like grand chords of stirring and solemn music.

I can merely indicate what pictures the science of religion has to draw here. The assistance of students of Indian religions is not certainly the least to give it the power to reduce these pictures from floating mists to definite form. We accompany that science to its very heights. We furnish it with material, with facts that shall prevent it from merely playing with airy forms. Moreover, whatever we have given it returns to us again open to a higher, broader, and freer understanding. I said at the beginning of my discussion that each historical form is itself alone, occurs only once. Now we think we see reflected in this one form other forms, scattered over wide stretches of space and time. The single form remains constant, and yet it may appear to us as if it first received its fullest significance, its position in all life, through this reflection.

Have I strayed too far, in what I have said, from the question of the relation of the different branches of investigation, into a discussion of the relationships of the objects of these investigations? It will hardly be possible to deal with the first problem objectively without constantly introducing the second. My real aim, however, was always this, to show how our study is closely associated with that of our fellow scientists, with the work of specialists, and with the study of broad and universal problems. If it were conceivable that our share in all this were suddenly made void, surely many a gap would be bitterly felt. The science of religions would be more limited and poorer if, among the voices of the peoples that it hears and interprets, the voice of that people were missing which created the prayers and sacrifices of the Veda and the figure of the Buddha shrouded in mystery.

BRAHMANICAL RIDDLES AND THE ORIGIN OF THEOSOPHY

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From olden times, as an early exercise of the primitive mind in its adjustment to the world about it, comes the riddle or the charade. The fresher the vision, when the world was young, so much keener was the interest in the phenomena of nature, in the phenomena of life, and in the simple institutions which surrounded man. All harmonies and fitnesses, all discrepancies and inconsistencies attract the notice of children and the childlike man. Hence children love riddles; hence savage or primitive peoples put them. All folk-lore is full of them. They are the mystery and at the same time the rationalism of the juvenile mind. As civilization advances they still sustain life, but they grow more complicated, more conscious and exacting, as the simpler relations become commonplace, and interest in them fades and wears off. Finally the riddle and the charade remain only in games and occasional plays on words. Humor and fun have taken the place of the shallow mystery which is now gone forever.

Mythology and religion are largely attempts to account for outward nature, and to adjust the inner self to outward nature: we may say confidently that the riddle-question and the riddle-answer could not fail to come out in these attempts. We may trust in this, as in many related matters, to the Vedic poets. Their intense preoccupation with nature myth, with liturgy and with the psychophysical qualities of man, is expressed to some extent in riddle form: the Veda is the home of the mythological, liturgical, and philosophical charade. And what is particularly interesting and quite puzzling, there are also riddles about ordinary things which descend to the level of the nursery and the bar-room.

It is one thing to know that riddles are ever near and dear to the heart of the people; it is another to account directly for the impulse which originated them or preserved them in a religious literature

of a type as advanced as the Vedic hymns. How and why were they produced or preserved? There must have been some peg to hang them on.

The Veda is in no sense a *belles-lettres* collection. All its books are in some sense religious; they are for the most part, in fact, liturgic. All early Brahmanical literary remains, no matter under what impulse they were originally composed, were preserved for some useful purpose. The Hindus of the time of the Veda, if we judge them by their writings, were a practical people, in spite of the speculative turn of their minds. Their literature of a hundred works or more, the famous Upanishads not excepted, has in view personal advantage, the favor of the gods, the grant of wishes, or the destruction of enemies. The same motive, after all, pervades also the theosophic, pessimistic Upanishads: they also pander to a desire — the desire to escape the eternal round of existences. Whatever is left of the literature of early Brahmanism was saved because it had managed to obtain a work on some definite occasion, because it was primarily composed for a religious purpose, or secondarily adapted to such a purpose. It is not otherwise as regards the riddle.

The Vedic word for riddle is *brahmodya*, or *brahmavadya*, that is, analysis of, or speculation about the *brahma*, or religion. The great sacrifices, the so-called *çrāuta*-sacrifices, such as *rājasūya* (coronation of a king), or *açvamedha* (horse-sacrifice), were for the most part undertaken by kings and rich nobles, not by the smaller householder who could not afford them, or had no occasion for them. They had in them the elements of tribal or national festivals. Of course they were expensive. A large number of priests had to be present, and they were not at all shy about asking fees (*dakshinā*) for their services. A sly way they had of making these fees exorbitant; namely, they recited poems in praise of generous givers of old, so-called *dānastutis*, "gift-praises," and *gāthā nārāçanisyah*, "stanzas which sing the praises of generous men." In most of these simply fabulous stories of presents to the Brahmans are recorded. They sing these songs so loudly that the Vedic texts in their soberer moments stamp them as lies (*anṛtam*), and decry them as pollution (*çamalam*). Once the reciter of gift-praises and the man drunk with brandy (*surā*) are placed on the same plane; they are so foul that gifts from them must not be accepted. Now we are told distinctly that the Vedic kings, or tribal Rājas, were not only interested in the mechanical perfection and success of the sacrifices undertaken under their patronage, but that they were even more impressed by the speculative, mystic, and philosophic thoughts which were suggested by various phases of the sacrifice. In later Upanishad times the kings appear as the questioners of the great Brahmans who solve for them the riddle of existence. Whenever their questions are an-

swered satisfactorily, in the midst of a continuous discourse, the king again and again is excited to generosity: "I give thee a thousand (cows)," says King Janaka of Videha repeatedly to the great Vedāntic Brahman Yājñavalkya, as the latter unfolds his marvelous scheme of salvation in the "Great Forest Upanishad." Kings were known to give away their kingdoms on such occasions; and kings became themselves glorious expounders of theosophic religion.

Thus the Brahmans who must impress the "generous giver" with their theological profundity — sometimes the hollowest mock profundity — used the riddle-form, inherited from ancient folk-lore, to enliven the mechanical and technical progress of the sacrifice by impressive intellectual pyrotechnics. One Brahman puts the riddle; the other answers it. It is a theological "quiz," arranged by the parties: questioner and responder know their parts to perfection.

At the horse-sacrifice two priests ask and answer: "Who verily moveth quite alone; who verily is born again (and again); what, forsooth, is the remedy for cold; and what is the great (greatest) heap?" The answer: "The sun moveth quite alone; the moon is born again (and again); Agni (fire) is the remedy for cold; the earth is the great (greatest) heap." (Vājasaneyi Samhitā, 23, 9 and 10.)

"I ask thee for the highest summit of the earth; I ask thee for the navel of the universe; I ask thee for the seed of the lusty steed; I ask thee for the highest heaven of Speech (Vāk)." The answer is: "This altar is the highest summit of the earth; this sacrifice is the navel of the universe; this soma (the intoxicating sacrificial drink) is the seed of the lusty steed; this Brahman priest is the highest heaven (that is to say, the highest exponent) of Speech." (*Ibid.* 23, 61 and 62.)

The priest called Hotar asks the priest called Adhvaryu: "What, forsooth, is the sun-like light; what sea is there like unto the ocean; what, verily, is higher than the earth; what is the thing whose measure is not known?" The Adhvaryu priest answers: "Brahma is the sun-like light;[1] heaven is the sea like unto the ocean; Indra is higher than the earth; the measure of the cow is (quite) unknown." (*Ibid.* 23, 47 and 48.)

The Brahman priest asks the Udgātar priest: "How many are the sacrificial substances, and how many are the syllables; how numerous the oblations and the fagots; the categories of the sacrifice let me ask you; how many Hotar priests sacrifice in season?" The Udgātar priest answers: "Six are the substances of the sacrifice, and hundred are the syllables; eighty the oblations, and three the fagots; the categories of the sacrifice I do tell thee; seven Hotar priests do sacrifice in season." (*Ibid.* 23, 57 and 58.)

And now by previous arrangement a mutual admiration riddle; it is an undisguised *oratio pro domo* in which the Brahman priest, or

[1] Byron, *Siege of Corinth*, XI.

High priest, and through him the entire priesthood, is extolled in terms of frank selfishness. The Udgātar priest asks the Brahman, the highest priest at the sacrifice, the following leading questions: "Who knows the navel of this universe; who heaven, and earth, and atmosphere; who knows the birthplace of the lofty sun; knows, too, the moon, whencesoever born?" The Brahman priest answers: "I know the navel of this universe; I, heaven and earth and atmosphere; I know the birthplace of the lofty sun; know, too, the moon, whencesoever born." (*Ibid.* 23, 59 and 60.)

We see the whole stuff of religions: nature myth, liturgy, human psychology, theosophy; they all present themselves as mystery fit for the riddle, and they are handled often in a very fresh and original way; perhaps yet more often with labored obscurity, with mock profundity, designed to swell the importance of the too simple thought. But what is most remarkable, the same ritualistic texts that have preserved the divine riddle have also preserved the, so to speak, human riddle — very human indeed in its choice of the most ordinary objects, in its shallow didacticism, in its lumbering humor, and in its naïve grossness. Especially in the so-called *kuntāpa*-hymns of the Atharva-Veda, a curious medley of gift-praises, didactic stanzas, riddles, and obscenities, all of which are firmly imbedded in the liturgy, the homely riddle appears, at the first blush, like the cry of a baby in arms in a serious assembly. What shall we say of religious texts that break out in the nursery-charade? Once it is said that the gods propounded these charades *à la* sphinx to the Asuras, or devils, and so got the better of them: "In that which lies stretched out there is hidden that which stands: (what is it?)" Answer: "The foot in the shoe."

"By drawing two little ears to one's self they are gotten out in the middle: (what is it?)" The tying of a knot in a rope.

"Well, here it is, east, west, north, and south; as soon as you touch it, it melts away: (what is it?)" Answer: "A drop (of rain)."

Then three riddles from the animal and vegetable kingdoms, typifying the actions of quick arrival, swift disappearance, and firm standing, or permanence. The thing is at once subtle and simple: "Bounce! he has come: (what is it?)" Answer: "The dog." "Whish! it is gone: (what is it?)" Answer: "The fall of a leaf." "Bang! it has trodden: (what is it?)" Answer: "The hoof of an ox."

The decencies of present-day literature forbid the report of that very characteristic class of riddles which deal with human nature in the narrow sense, and with the sexual relation (Atharva-Veda, 20, 133), but it is well to bear their existence in mind when looking for an explanation. The theme, of course, primarily suggests popular origin. Yet its presence in the liturgy is taken with the utmost seriousness by the ritualists; they explain and apologize for its foolish

and obscene character. The entire material has the look of a fossil: it is something which must have stood in a prehistoric period outside of the sacrifice, being connected with it at first by looser, more accidental ties, until the rigid formalism of which the existing texts are the final expression had placed everything upon the same footing of sanctity. The nursery-charade, and worse, cannot reasonably be supposed to have found its way into the ritual in any other way. This is true in spite of the scientific seriousness of the Hindu mind and its naïve love of schematizing, which makes it possible in later times for the *ars amandi* (*kāmaçastra*) to treat the most incredible things in scientific *sūtra* style — the style, for instance, of the *sūtras* of the Vedānta and Sānkhya philosophies, or the grammatical rules of Pānini. This material was obviously popular at first, and I have little doubt as to the reason of its presence in the sacred texts. It generally occurs in close neighborhood to the festive "gift-praises," which, as stated above, were not only intended to stimulate future givers, but also mark the note of hilarity. No doubt these served as a bridge from the real solemnities of the sacrifice to what, for lack of a better term, we might call — borrowing a German student term — a kind of a liturgic "saukneipe." Plainly speaking, the bestowal of the sacrificial fees (*dakshinā*) in many cases must have led to gormandizing and drunkenness, and these were probably in turn followed — the practice is not entirely unknown at the present day — by shallow witticisms of this sort. This we must not imagine to have taken place without interruption, without recollection of the religious character of the occasion as a whole, because theosophic and cosmic riddles and discussions come in too. In the main, however, social jollification was the original motive, until, in the course of the ossification of the ritual, even the most trivial moments march by in the procession of the sacrifice, misunderstood and suspected, yet respected. They are now as sacred and ineradicable as the most thoughtful prayer to the gods. But a modern Vedāntist, the late Svāmī Vivekānanda, found it in his heart to speak of "those disgusting Vedas."

We can now understand both the origin and the enormous propagation of the theosophic riddle and the theosophic hymn, which is always more or less of a riddle. Grown from folk-lore roots, fructified by the Hindus' intense appreciation of all relations as mysteries, it grew to full strength in connection with the sacrifice and its patronage of a superior variety of religious intellect. The highest forms of Hindu religion have always operated from the ontological side, from the severely intellectual side. Faith and piety, sentiment and emotion, are almost entirely wanting in early Brahmanism, although in later times *bhakti*, or piety, tends to rival the religious emotions of John Tauler and Thomas à Kempis. No one will say that

theosophic thought would not have existed without the technicalities of the sacrifice and its intellectual scintillations, but it is easy to see that it owes a great deal of its development to the sacrifice. Wisdom-searching Rājas weary of the world, Janaka and Ajātaçatru, Buddha and Bimbisāra, have as much to do with the development of Hindu religion as the thirst for new truth native in the Brahmans themselves. They are the Maecenases of the "poor clerics," and they, having a superabundance of the world, are attracted permanently to the things beyond. So, without doubt, early theosophy grew under the same patronage, in a natural desire of the Brahmans to vitalize the outer forms of the ritual technicalities; in a natural desire, too, to obtain position and reputation by something better than the handling with rigid correctness of firewood and sacrificial ladle, of *soma* drink and oblations of melted butter.

The extent to which the riddle habit had taken hold of those early philosophers may be seen in the outer form of the riddles themselves. In the cases hitherto mentioned, the question is stated in full, and the answer is given in full. But this is not the only form. Sometimes (Āitareya Brāhmana, 5, 25, 15 ff.) the riddle is put in a concise categorical statement, instead of a question; the answer again follows. Again — and this is the most common form — the riddle is put either in the form of a categorical statement or a question; the answer is withheld: either it is held to be too obvious, or the object is to impart additional interest and mystery to the riddle. Finally there are riddles (Āitareya Brāhmana, 5, 25, 23; Āçvalāyana Çrāutasūtra, 8, 13, 14) which contain only the answer to a question, which is presupposed and easily supplied. Countless statements based on remote analogies, harboring violent paradoxes, indeed at first sight nonsense, are in reality riddles. There is hardly anything in the wide world of things and thoughts which does not share some quality with something else: this is enough to justify identification. When the essence or outer form fails, the name opens the door to a labyrinth of etymological crookedness in which every road leads to every goal: the name and the thing (*nāma* and *rūpa*) are of equal value and dignity.

The Rig-Veda, the most important of Hindu books, contains two riddle hymns of great interest, about neither of which the last word has been said. One (8, 29) is a hymn of ten small crisp stanzas which, I venture to say, is a so-called *nivid*, or invitation to the gods to come to the sacrifice. But what kind of an invitation? Instead of the usual clear note of fervent call, ten varieties of gods are merely indicated by their most salient qualities. The names of the gods are never mentioned, but instead catch-words, as it were *leit-motifs* in the Wagnerian sense, which describe them so definitely as to leave no doubt as to which one is meant. The stanzas are arranged so that the

first seven deal with single gods (*eka*); the next two with dual gods (*dvāu*); the tenth with a plural group of divine beings (*eke*). To realize how subtly all this is done, we must notice that the three important divinities of stanzas three, four, and five all carry weapons or tools; yet the stanzas keep them so distinctly apart that no hearer could possibly have been in doubt:

3. "An axe (*vaçī*) of brass one carries in his hands; he is firmly fixed among the gods."

It is the god Tvashtar, "Fashioner."

4. "A bolt (*vajra*) is fixed within the hand of one; the demons with it does he slay."

It is the god Indra, the Hercules of the Veda.

5. "A sharp weapon one holds in his hand; strong (*ugra*) he is; the urine (*i. e.* rain) of heaven is his remedy (*jalāshabheshaja*)."

It is the god Rudra (Çiva).

The eighth stanza reads:

vibhir dvā carata ekayā saha pra pravaseva vasatah.

"Two gods together with one goddess travel, drawn by birds; like travelers do they travel far."

The two Açvins, the young sons of the morning, suspiciously similar to the Dioskuri, Castor and Pollux, travel with their bride Sūryā, the young sun-maiden, upon a car drawn by birds. As they are at the same time the heavenly physicians, they are thought to be particularly welcome guests, and they stop off, in the course of their travels, at the houses of the pious, and this cunning riddle is the invitation extended to them.

The other hymn of the Rig-Veda (1, 164) is the *pièce de résistance* of the riddle literature. It is an assemblage of fifty-two longer stanzas, all of them, except one, riddles whose answers are not given. The one whose answer is stated is identical with the first one cited in this paper. The others involve objects or ideas which, instead of being called by their ordinary names, are indicated, either by their well-known qualities, or, preferably, by some mystic or symbolic indication. Numbers especially play a great part in these indications. The subjects are either cosmic, that is, pertaining to nature; mythological, that is, referring to the accepted legends about the gods; psycho-physical, that is, pertaining to the human organs and sensations; or finally, crude and tentative philosophy or theosophy. Heaven and earth, sun and moon, air, clouds and rain; the course of the sun, the year, the seasons, months, days and nights; the human voice, self-consciousness, life and death; the origin of the first creature and the originator of the universe — such are the abrupt and bold themes. The mysticism and symbolism of these riddles make their solution a task of unequal certainty; yet on the whole they also are remark-

ably clear, considering the stout efforts that seem to have been made to obfuscate their sense.

The first riddle is:

"Of this dear gray Hotar priest the middle brother is of the rock; the third brother carries ghee on his back. Here have I seen the householder that has seven sons."

It is the god Agni, "Fire," in three important aspects. The first is the sun, or heavenly fire, the old, or immemorial sacrifice fire in the sky; the second is the fire of the heavenly rock, or cloud, that is, lightning; the third is the earthly sacrifice fire upon whose back the oblations of ghee are poured. The whole is the household fire with seven sons, that is, many tongues.

The second riddle is: "Seven hitch the car that has one wheel; a single horse that has seven names draws it. The wheel of three naves is imperishable, and not to be checked: upon it do all beings stand."

The riddle is in the main clear. The answer is the sun. A single wheel drawn by the seven sun-steeds courses on the sky. The three naves are either three divisions of the day, or, less probably, of the year. In the light of the imperishable sun all beings carry on their existence.

As a specimen of a theosophic riddle we may take 46. It contains the suggestion, fateful for all advanced Hindu thought, that above and behind the great multitude of gods there is one supreme personality; behind the gods there is that "Only Being" of whom the gods are but various names.

"They call (it) Indra, Mitra, Varuna, and Agni, or the heavenly bird Garutmant (the sun). The sages call the One Being in many ways; they call it Agni, Yama, Mataricvan."

It is but a step from this idea to the pantheistic, absolute, without a second, Brahman-Ātman of the Upanishads and the Vedānta philosophy — that perfervid monism, the like of which the world has not seen outside of India.

Significantly this riddle habit has insinuated itself into the more systematic and continuous speculations. There is a famous hymn, Rig-Veda, 10, 121, in which Prajāpati, the lord of creatures and the world, the typical Father-god, is lauded without stint, but his name is never mentioned: instead at the end of each stanza, the question is asked as a kind of riddle, "Who is this god that has such and such qualities, and performs such and such wonderful deeds?" Of course every one knows, but the later theologians have gravely constructed a god "Who" out of the question: *mirabile dictu*, the riddle question turned into an anthropomorphic god!

1. "In the beginning there arose the germ of golden light; he

was the one born lord of all that is. He established the earth and this sky — who is the god to whom we should offer our oblations?"

3. "He who through his power became the sole king of this breathing and slumbering world; he who governs all, men and beasts — who is the god to whom we should offer our oblations?"

There are two points which impress themselves forcibly in connection with these riddles as we see them put into the service of philosophic speculation. First, the cool intellectuality of Hindu theosophy, its clever yet often mechanical play with terms, and its growingly rigid and logical definitions are unquestionably in a measure the children in direct descent of the riddle habit, which has found its way from folk-lore beginnings into myth, liturgy, and philosophy. That the Hindus of the time of our texts took these things seriously, we can see from the name they have given the entire habit and practice — *brahmodya*, discussion of the *brahma*. The name is in any case daring; but it would be childish, unless, at the time of its giving, the higher rather than the lower, the mystic philosophic (in the broadest sense) rather than the trivial, riddles were in the mind's eye. Anyhow it is quite clear that in India, and, so far as I know, in India only, the riddle, to use the French expression, has arrived. It has there become a vehicle and doubtless also a promoter of higher, or, let us say, more cautiously, persistently complicated thought, and it approaches in dignity the other earlier efforts to solve the mystery of existence and the universe, as they appear in the theosophic hymns of the Veda and in the prose Upanishads.

There is a second matter upon which these riddles throw strong light. A distinguished scholar has recently advanced the theory that Hindu philosophy is not, as has been tacitly assumed, the product of Brahmanical intellect, but that it was due to the spiritual efforts of the Royal or Warrior Caste. Professor Garbe,[1] of the University of Tübingen, is an eminent student of Hindu philosophy, and at the same time well versed in the early literature of the Vedas. He is not an admirer of Brahman civilization: on more than one occasion has he poured out the vials of his just wrath against the many pretensions and the cruelties which the Brahmans have practiced during the period of their ascendency in India through several millenniums. But not content with that, he believes that the Brahmans were not only bold bad men, but also that they were too stupid to have worked their way from the sandy wastes of ritualism to the green summits where grows the higher thought of India, notably that monism which is *the* Hindu intellectual idea *par excellence*. For centuries the Brahmans were engaged in excogitating sacrifice after sacrifice, and hair-splitting definitions and explanations of senseless ritualistic

[1] See the first article in his volume of essays, entitled "Beiträge zur Indischen Kulturgeschichte" (Berlin, 1903).

practices. All at once, says Professor Garbe, lofty thought appears upon the scene. To be sure, even then the traditional god-lore, sacrificial lore, and folk-lore are not rejected, but the spirit is no longer satisfied with the cheap mysteries of the sacrificial altar; a passionate desire to solve the riddle of the universe and its relation to the own self holds the mind captive; nothing less will satisfy. In this observation of Professor Garbe everything is correct, nay even familiar, except the words "all at once." Mental revolutions rarely come all at once; least of all in India. The evidence of fairly continuous records shows that every important Hindu thought has its beginning, its middle, and its final development. Now the Vedic riddle is certainly a product which has been fostered up to its actual scope, an extraordinary scope, as we have seen, by the Brahmans. It is tied by so many threads to Brahmanical literature and Brahmanical performances that there can be no doubt. All the riddles occur in the midst of unquestioned Brahmanical texts; most of them are in the standard metres of the Brahmanical Vedas; a reasonable explanation why they were taken up and propagated by the Brahmans, namely, to enhance the interest and importance of their intellectual performances, has been stated above. No other reason has ever been suggested.

Now the boundary line between theosophic riddle and the more set efforts at theosophic speculations cannot be found. "They call it Indra, Mitra, Varuna, and Agni, or the heavenly bird Garutmant; the sages call the One Being in many ways," etc. This is a riddle, as we have seen. How far is this from another statement in a hymn of the Rig-Veda (10, 129, 2): "That One breathed (itself), without breath, through its own will; other than it there nothing since has been." Here we have the severest monism in a Brahmanical hymn in the same metre (*trishtubh*) in which the Vedic poets loved to call upon their fustian god Indra. Even Brahmanical nature-worship is dashed again and again with monism. Rig-Veda, 1, 115, 1, says of Sūrya, the sun: "The sun is the Self or Soul of all that moves or stands." Another stanza (Rig-Veda, 3, 62, 10), the famous so-called Sāvitrī, which remains sacrosanct at all times, and is recited to this day by every orthodox Hindu, turns to Savitar, another form of the sun:

"We meditate on the adorable light of divine Savitar, that he may arouse our holy thoughts."

Here is almost the first touch of that inimitable combination of the Upanishads, the Ātman "breath" and the Brahma "holy thought," that is, the combination of physical and spiritual force into one pantheistic One and All. As a modern Hindu, the late Rājendralāl Mitra, says of the Sāvitrī:[1] "It is, of course, impossible to say

[1] Introduction to his edition of the Gopatha-Brāhmana, p. 24.

what the author of the Sāvitrī had in view, but his Indian commentators, both ancient and modern, are at one in believing that he rose from nature up to nature's god, and adored that sublime luminary which is visible only to the eye of reason, and not the planet we daily see in its course." Kātyayāna, in his Index to the Rig-Veda (the so-called Anukramanī), after reducing all the gods of the Veda to three types, to Agni (fire and light on earth), to Vāyu (air or wind in the atmosphere), and to Sūrya (sun in the sky), proceeds still farther to assert that there is only one deity, namely the "Great Self" (*mahān ātmā*), and some say that he is the Sun, or that the Sun is he." Similarly Yāska in the Nirukta.

I am afraid that Professor Garbe has worked himself into the state of mind that there is only one kind of good Brahman, namely, a dead Brahman, to paraphrase a saying about that other Indian, the American Indian. Selfishness, foolishness, bigotry, and cruelty galore — the marks of these some Brahmans have left in their compositions, foolishly as behoves knaves. But there were Brahmans and Brahmans. The older Upanishads, written in the exact language and style of the so-called prose Brahmana texts, figuring, indeed, as parts of these compositions, joining their speculations closely to their ritualistic mysticism, were composed by Brahmans who had risen to the conviction that not "the way of works" lies the salvation that is knowledge. Countless Brahmanical names crowd these texts: Naciketas, and Çvetaketu; Gārgya and Yājñavalkya, and many others. Even the wives of great Brahmans participate in these spiritual tourneys, and occasionally rise to a subtler appreciation than their lords of the mystery of the world and the riddle of existence.

Professor Garbe has been attracted to his position by the interesting fact that the Upanishads narrate on several occasions that the knowledge of the ultimate philosophy was in the keeping of men of royal caste, and that these taught their knowledge to Brahmans. This is put in such a way that the Brahman, after having aired his own stock of theosophy, "lays down" before the king's superior insight. The king is then represented as graciously bestowing his saving knowledge upon the Brahman. Once or twice, however, the king turns braggart, and mars his act of generosity by claiming that the warrior caste are the real thing, and that they alone in all the world are able to illumine these profound and obscure matters. I doubt whether this justifies us in regarding the warrior caste as the spiritual saviors of India. In the first place the very texts which narrate these exploits of the Kshatriyas are unquestionably Brahmanic. Would the arrogance and selfishness of the Brahmans have allowed them to preserve and propagate facts calculated to injure permanently their own standing? Surely not.

The situation is somewhat as follows: There never was a time in

India when the Aryas, that is, the three upper castes, were excluded from Brahmanical piety. Now as theosophy, by its very terms, shuts down on the ritual, the special profession of the Brahmans, there is nothing at all in it to exclude occasional intelligent and aspiring men of the other noble castes. This is true up to the present day. Here is where the good Brahman, of whom Professor Garbe will not hear, comes in. The compilers of the Upanishads were honest enough to recognize this participation, to express their unbounded admiration of it, because after all there was to them something unexpected in it. They are carried away by it to a certain amount of ecstasy, the kind of ecstasy that goes with a paradox, as when the son of a peasant becomes a professor at a university. We must not forget either that the Rājas were after all the source from whom all blessings flow. Even in theosophic occupation the Brahman remains the poor cleric with the Rāja as his Maecenas. I think that any one who reads these statements of royal proficiency attentively will acknowledge that they are dashed in the Upanishads, as they are in the Ritual, with a goodly measure of *captatio benevolentiae*. In other words, the genuine admiration of high-minded nobles is not necessarily divorced from the sub-consciousness that it is well to admire in high places. Even really good Brahmans might do that. If King Janaka of Videha punctuates Yājñavalkya's brilliant exposition of theosophy by repeated gifts of a thousand cows, King Ajātaçatru of Benares, real intellectual as he is, will not allow admiring Brahmans to starve. So we find here at the end of the religious development, when the riddle of the universe has been solved, the same economic conditions which govern the singing of Vedic hymn, the sacrifice to the gods, and the propounding of those humbler riddles which form the starting-point of our discussion. But with all their faults we love them still: some Brahmans, though not all Brahmans, were at all times, as they are to the days of Çānkara and Kumārila, the intellectual leaders of India; brilliant helpers from the other castes lend occasional aid.

SHORT PAPER

Mr. Teitaro Suzuki, of La Salle, Illinois, contributed a paper to this Section entitled "Is Buddhism Nihilistic?" After stating some of the fundamental principles of Buddhism and of "many of the moral precepts" as contained in the *Book of Buddha's Last Sermon*, he argued that Buddhism can be said, in a sense, to be purely an ethical system, but by no means a gospel of annihilation. After a further discussion of the two main divisions of Buddhism the speaker impressed upon the audience that all religious systems, whatever their original character, must adapt themselves to new surroundings into which they are going to develop, and to undergo such transformation as best to suit the newly created needs. Any religion that is not plastic is surely doomed to die as soon as it finds itself in a totally different situation. The commonest mistake by the masses is to take religious influence as well-nigh omnipotent.

SECTION B — MOHAMMEDISM

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(*Hall* 8, *September* 23, 3 *p. m.*)

CHAIRMAN: PROFESSOR JAMES R. JEWETT, University of Chicago.
SPEAKERS: PROFESSOR IGNAZ GOLDZIHER, University of Budapest.
PROFESSOR DUNCAN B. MACDONALD, Hartford Theological Seminary.

THE PROGRESS OF ISLAMIC SCIENCE IN THE LAST THREE DECADES

BY IGNAZ GOLDZIHER

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THE title given by me to this discourse clearly indicates that we study and judge the life of Islam, and the documents from which we learn the history of its development, from quite different points of view from our predecessors of half a century ago. The scientific study of Islam has exhibited very significant progress in these last decades. I not only mean to say that we know *more* about Islam, and that our knowledge is more abundant than that, for instance, of Hadrian Reland's (1704) contemporaries. This increase of knowledge is the natural outcome of two things: first, a more intimate knowledge of the countries where the believers in this religion live; secondly, the always increasing knowledge of the theological literature of Islam and its sects. But we also know Islam in quite a different manner from our predecessors. That is to say, we consider it from other points of view and study it by other methods.

There are two groups of the scientific results of our modern time, which could not pass without having an effect upon the study of Islam, nor could the researches concerning it escape their influence either.

First, the methods of historical critics which have proved successful with the documents of other religions. In other words, the traditional documents of the origin and development of Islam have been submitted to the same historical-critical examination as we have

been taught to apply to the literary witnesses to ancient Christianity and rabbinical Judaism.

Second, the science of comparative religion, which has only risen in these last decades, has established ethno-psychological laws of universal value for the understanding of the origin and growth of the religious ideas of men; of it, too, we have made use in comprehending the complicated phenomena of the historical Islam.

We have, then, applied the results of these two methods, the historical-critical and the comparative-religious, to our consideration of Islam. You cannot fail to observe on these premises the total change which has taken place, leaving aside special monographs, when you compare the manuals of our day treating *universal* questions with those of older literary periods. How much rubbish has been cleared away, from what different points of view the seeds, bloom, and fruit of Islam are considered! How the dead letter has been brought into life and placed in living connection with historical reality! The great Hadrian Reland, to whom we owe the first scientific treatises on Islamic institutions, when introducing his subject, believed he could not better recommend his inquiries than to present them "*uti docetur in templis et scholis Mohammedicis*"; that is to say, "as they are taught in Muhammadan temples and schools." We modify this principle, or rather enrich it and represent Islam as it appears in its development, in its living formation, and in its effects on society and in history.

If, after these introductory remarks, I had to indicate in short the results themselves which this new scientific view of Islamic matters has brought to light, I could on this American soil deliver myself of that task with the greatest ease. Read the book appearing scarcely a year ago in New York by my learned friend, Duncan B. Macdonald,[1] Professor in Hartford, whom I am particularly happy to see among my hearers to-day, and I feel sure the volume will afford enjoyable reading for you all. You will find there united in interesting literary form, and with exact scientific touch, the results to which the modern scientific views lead, and a solid conclusive summing-up of conscientious and minute researches about Islamic development, as it appears in a literature embracing thirteen centuries. It is a contribution offered by America to this department of knowledge, calling forth our thanks.

But what are the paths modern science had to follow to come to such results? This shall form the subject of my reflections to-day.

[1] *Development of Muslim Theology, Jurisprudence and Constitutional Theory*, by Duncan B. Macdonald. New York (Charles Scribner's Sons), 1903. (Series of Hand-Books in Semitics, edited by J. A. Craig, no. IX.)

II

It is no longer *single* errors of detail which we have to correct. Of course some of them have prolonged their lives with the obstinate perseverance peculiar to untruths, creeping, even to this day, from manual to manual and belonging to the iron fund of Oriental *falsa*. Some pet notions to which the Orientalists of the sixteenth and seventeenth centuries clung very closely are now extirpated root and branch like the seven nations of Canaan. For instance, you could read in older works — and it sometimes appears in newspapers even to the present day — that Muhammad found his last resting-place in Mekka in the holy Ka'bah, and also that his tomb there is the goal of the famous pilgrimage of Islam. The tale about the magnetic walls, between which the coffin of the Prophet is suspended in the air, has — we hope — vanished altogether. The books about the East and the travels of the sixteenth and seventeenth centuries could not do without that fable. The idea universally spread in past centuries, that every Jew wishing to share the Prophet's Paradise as a true Believer was obliged to pass through the Christian religion, by being regularly baptized, as Jesus is also acknowledged by Islam as a prophet, has likewise disappeared, though Martinus Baumgarten of Nürnberg (1507) was not the last to believe and copy the story.[1]

These and many other things, we are now luckily done with. They did not endure until we had penetrated with our critical lead into the depths of popular ideas. But what was sustained more obstinately than a dozen such blunders was the thoroughly false doctrine, which had caught hold on our educational literature; namely, that the barrier between the two great divisions of Islam, the Sunnites and Shi'ites, consists in this, that the latter recognize beside the Koran nothing as an authority, while the former acknowledge beside that revealed religious book also the Sunna, namely, tradition, as a source of religious conduct and creed; an erroneous view which to this day has not yet disappeared from the schools.

But the errors in these particular questions can only be attributed to false information. With correct information such blunders could have been easily prevented.

The true progress of the science of Islam, of which we are to speak here, brings us into close connection with the forming and developing forces and factors of Islam. You can now ask first of all, Do we know and understand the Koran better than the scholars of the preceding generation, and can we present this advanced knowledge to an instructed public in a sure form? This first question we can

[1] Cf. the present writer's article: "Die symbolische Rose in den nordafrikanischen religiösen Orden," in *Oesterreichische Monatsschrift für den Orient*, 1890, p. 8 ff., where are presented a considerable number of such mistakes.

at once answer in the affirmative. Not that we have learned a great deal as regards the language and the exegesis of this sacred book of Islam, though there are peculiarities (for instance the knowledge of borrowed words)[1] by which our understanding has increased in this too. Yet in general the philological problems of the Koran are not so complicated as those of the Vedas and the Avesta. But the indefatigable zeal and masterly penetration of scholars like Theodor Nöldeke, W. Robertson Smith, and Julius Wellhausen[2] have, out of most minute researches into and criticism of the literary remains and by simultaneous comparison with other Semitic faiths, diffused surprising light upon pre-Islamic religion and the sentiments and institutions of the old Arabians: a significant progress compared to the last preceding valuable analysis of the pre-Islamic religion by Osiander (1853) and Ludolf Krehl (1862). By the deepening of our knowledge about the pre-Islamic state of Arabian religion, about the civilization and ethical positions, the customs and laws of the tribes, our points of view for judging Muhammad's reform are essentially enriched and its starting-points and antecedences are now clearer to our eye. In one word: the environment, in which the Prophet grew, the community to which he applied himself with his enthusiastic speech, have approached us scientifically and therefore we understand them better.

The impulse also inducing Muhammad to destroy the pagan traditions of his native country, the Jewish and Christian elements, namely, in his teaching, have been examined closer and closer. Though the theological interest has from the beginning of these studies ever favored the inquiry into the dependence of Islam on Judaism and Christianity, even this old tendency has again taken a new quickening, and I take pleasure in referring at this place to the valuable Eli Lectures of the American scholar Henry Preserved Smith on the relationship of the Koran to the Old and the New Testament.[3]

Among the sources from which Muhammad derived the constructive thoughts of his doctrine, Parseeism enters more and more into the foreground of consideration. One could rather presume that the

[1] S. Fraenkel, *De vocabulis in antiquis Arabum carminibus et in Corano peregrinis* (Lugd. Batav. 1880). — *Dvořak, über die Fremdwörter in Koran* (Wien, 1885, Sitzungsber. der Akad. der Wiss. zu Wien, Phil. hist. Cl. vol. 109).

[2] W. Robertson Smith, *Kinship and Marriage in Early Arabia* (Cambridge, 1885; new edition, London, 1903); J. Wellhausen, *Reste arabischen Heidenthums gesammelt und erleutert* (Berlin, 1887, Skizzen und Vorarbeiten, part 3; new edition, Berlin, 1897), and the important criticisms of these works by Th. Nöldeke, in *Z D M G.* vols. 40 and 41. — W. Robertson Smith, *Lectures on the Religion of the Semites*, First Series (London, 1889; new edition, 1899); Wellhausen, *Die Ehe bei den Arabern* (Göttingen, 1893, in *Nachrichten von der Kgl. Gesellsch der Wiss.* no. XI).

[3] H. P. Smith, *The Bible and Islam, or the Influence of the Old and New Testaments on the Religion of Mohammed*, being the Eli Lectures for 1897.

Prophet of Arabia has been influenced, besides some eschatological elements which the believers of monotheistic religions all owe to Parseeism, also in other religious points of view by the Madjus (as he calls the followers of Parseeism) who were accessible to him. It is not very attractive, that the idea of the personal "impurity" of the Unbeliever — a Persian idea — should be the fruit of this influence. And indeed, at a closer view we find that the motives to intolerance, the persecution of followers of other persuasions, and to inter-confessional quarrels show themselves also in the further development of Islam as the fruit of Persian influence and not as the primitive effects of Arabism, which is quite inoffensive in religious respects.[1] In the same proportion as the analytical researches are getting deeper and deeper, in like manner the special inquiries about single points of Koranic belief are spreading more and more. Considering the manifold theoretical divergences existing between the different schools as to the dogmas which all could freely develop within their spheres, it will not be an easy task to state a dogmatic of Islam as a system, though desired from so many sides, which could be compared to the settled structure of the dogmatics of any Christian confession. My regretted teacher, Ludolf Krehl (died in 1901), who was one of the most competent authorities in this matter, has enriched science with many valuable special researches [2] and left a comprehensive work of this kind, which will, let us hope, be published by his pious successors. Meanwhile we have in different monographical researches many a useful treatise on the religious system of the Koran. Besides the work of Hubert Grimme [3] embracing the whole extent of this sacred book of Islam, we have monographs on *Muhammad's Doctrine of Revelation* (1898, by Otto Pautz) [4] and also on *The Doctrine of Predestination in Mussulman Theology* (1902, A. de Vlieger).[5]

[1] Cf. the present writer's paper: *Islamisme et Parsisme*, published in *Actes du premier Congrès international d'Histoire des Religions*. Vol. I (Paris, 1901).

[2] *On the Doctrine of Predestination in the Koran and its Relation to Other Islamic Dogmas* (Berichte der Kön. Sächs. Ges. der Wissensch. Phil. Hist. Cl. for 1870); *Contributions to Islamic Dogmatics*, I (*ibid.* 1885); *Muhammadan View on what they call fitra* (Festgruss an Rudolf Roth, Stuttgart, 1893); *Contributions to the Characteristic of the Doctrine about "Faith" in Islam* (Leipzig University-program for 1877).

[3] *A System of Koranic Theology* (Mohammed, part II, Münster, 1895).

[4] *Muhammads Lehre von der Offenbarung quellenmässig untersucht* (Leipzig, 1898).

[5] The doctrinal differences between the various dogmatic parties, as well as their history, have not yet been worked out in a *conclusive* manner since the attempt made by Alfred v. Kremer, in his *Herrschende Ideen des Islams* (Leipzig, 1868) and by Prof. Houtsma, in his *Strijd over het dogma in den Islam* (Leide, 1875). That is the reason why we have not dealt here with inquiries concerning single elements relative to this question. But we should mention many useful contributions hereto by Martin Schreiner in his studies published in *Z D M G*, vols. 42, 52, 53, and in the *Annual Reports* of the Berlin Lehranstalt für die Wissenschaft des Judenthums, for 1895 and 1900.

The origin and the historical character of Sufism (Islamic theosophy and mysticism) in its manifold shapes are also among the tasks to be solved in times to come.

III

Considering the mere form, there is certainly no seemingly surer kind of authentication than the great volume of reports, recognized as the tradition of Islam, can show to prove its credibility. You there meet with testimonies reaching backwards from generation to generation to the very founders and from trustworthy informants, who, as regards character and moral integrity, are above all suspicion, about words and deeds of Muhammad and of his companions, who report the words and deeds of their Master. You will understand with what painful conscientiousness the pious Muhammadans applied themselves to possess the Master's words in authentic form as reported by the best witness. On this depended their exact knowledge of the sacred history of Islam, the correctness of their creeds, nay, the very righteousness of their religious and lawful life; in a word, the conditions of their salvation. Holding in mind the importance of this matter, full care was bestowed by Islam upon the proof of authenticity of these documents and also upon the statement of the criteria of trustworthiness.

We can boldly assert that the criticism bestowed by the science of orthodox Islam upon the transmitted bulk of tradition is in general the *oldest example for such critical activity in the literature of the whole world.* It is attested to have existed since the eighth and ninth centuries of our era and to have attained its prime in the tenth. And strange to say, we must state here that the merit of having first formed the idea of criticism of religious sources is due to Islamic theology. Influenced by the great accuracy bestowed by conscientious Islamic critics upon their material, Occidental students were in fact benumbed for a long time by the nimbus of authenticity and truth surrounding those collections of Muhammadan tradition whose professed end was to separate the chaff from the pure corn by the application of an apparently strict method.

But no sooner did we make a closer inspection than we had to come to the conclusion that the points of view from which the Oriental critics started could lead to many a delusive result, in spite of the *bona fides* which they practiced. There are other critical points of view that are of value in our mature historical criticism. Thus you can find in the authenticated Islamic tradition contradictory information about the same events, and directly opposed utterances and orders of the Prophet on the same subject. You can find a great number of anachronisms which could only — as their theologians allow — be understood by the admission of prophetic foresight; there are praising and blaming remarks, approving and admonishing sayings, which can only refer to circumstances that occurred long after the time from which those traditions profess their derivation.

You will see that the traditions often show plainly the tendency to uphold the lawfulness of the then actual constitution of the Islamic state; since their collection and criticism took origin under the shadow of the 'Abbaside Khalifate. Nay, we have proofs that sayings, which might be favorable to opposing political schemes were directly suppressed. We have come, therefore, to the result that the tradition acknowledged as authentic, far from being able to pass for a testimony of the youth of Islam, has rather the varying stamp of the diverging directions and currents prevailing in different circles during the first three centuries. Hence the contradictory accounts and orders about the same question in religious and political affairs. Every school opinion has fabricated an authority reaching back to the Prophet's time. Each of the diverging doctrines has for its support a sentence of the Prophet's, which bears every appearance of authenticity, presenting itself in the most naïve and immediate manner. Orthodox believers, freethinkers, anthropomorphists, and spiritualists, all can show good traditions to support their doctrines.

The Islamic tradition presents the same picture in political history. The distinguished Professor of Strassburg, Theodor Nöldeke, has proved recently (1898) in a classical essay, *On the Tendentious Construction of the History of the Primitive Ages of Islam*,[1] how reports about questions seemingly trivial, as, Who was Muhammad's first follower? — about the minute characteristics of Abû Tâlib, 'Alî's father — also of 'Abbâs, the Prophet's uncle — the reports about the part they played in Muhammad's childhood — were produced by political and constitutional tendencies.

The question, "To what end?" offers one of the most useful points of view in judging the tradition of Islam. To have clear insight into the laboratory of these highly appreciated documents of primeval Islam, we must always keep in mind the ritualistic, dogmatic, and political dissensions of struggling parties, which emerged in Islam in the course of its ancient stages of development.[2]

Sometimes the very text of the tradition lets us see, as it were, its own biography, for any one acquainted with the technics of this kind of literature. You may see this, for instance, in a little fragment of traditional text, which, though insignificant in itself, yet is highly interesting as regards the history of civilization, and which I am going to put before you in translation. For your better understanding I must premise that the quotation is preceded by the following doctrine attributed to the Prophet: "If you hear that the plague has broken out in a country, do not go there; but if you are already there, do not leave the country from fear of catching the illness."

[1] *Z D M G*, vol 52.
[2] Cf. the author's *Muhammadanische Studien*, vol. II (Halle, 1890).

You see, Islam is putting up here a practical precept of how the every-day experience of contagious diseases may be somehow squared with the conviction that one cannot escape God's decree, and that one should not even try to evade it. Two opinions seem to have existed in old Islam as regards infection. The one does not admit any causal connection of events, but imputes each to a separate decree of God's. Such a view could not admit the possibility of a contagious character in certain diseases. The other did not base the explanation of facts entirely on dogmatical suppositions; some at least cared, in spite of a fatalistic creed, for their own skin and for saving their own property. The following traditional report shows you the struggle of these two modes of proceeding:

"Abû Huraira relates that the Prophet taught the following: *there is no contagion and no cankering worm* (causing disease), *and no soul-owls* (into which, according to the belief of the Arabs, the souls of the unavenged are transformed, in order to cry for the murderer's blood). Thereupon a Bedawi, who was present, threw in: 'O Messenger of God! but how is it that we see camels lying fresh and healthy like gazelles in the sand of the desert; then a scabby camel mixes with the flock, and infects all the healthy animals?' Then the Prophet replied: 'But who infected this sick camel?'

"Abû Salima relates that he heard later from Abû Huraira, that the Prophet had said: 'One must not bring a sick one among healthy ones,' and that he (A. H.) denied his previous comments. Then we said to him: 'Did you not say before, in the Prophet's name, "There is no contagion"? Then he muttered something in the Ethiopic language. — Abû Salima says: "I have never noticed that he had forgotten anything,"' (that he had told us formerly)."[1]

You can believe me that the Oriental commentators were not wanting in ingenuity for making the shadow disappear which was cast by the story just mentioned upon the earnestness and trustworthiness of Abû Huraira, who was one of the amplest informants from the Master. But, however naïvely the tale presents itself, it is technically nothing else than the reflex of, *first*, the two simultaneously existing views on the nature and efficiency of infection; *secondly*, the concession which knowledge, founded on experience, wrung from a religious conception. The fact of such a concession has found in Abû Huraira's hesitation and revocation a form suitable for these circles.

One is entitled to conclude that this critical penetration into the primeval documents of Islam shows a great progress in our knowledge of its oldest history. It is not only important, as regards the religious history of Islam, but also as concerns the criticism of the historical tradition. First on this path was Alois Sprenger, who not

[1] Bukharî, *Tibb nr.* 35, *Ṣaḥîḥ Muslim*, v, p. 54.

only pointed out, in his *Life and Doctrine of Mohammed* (1861–65), the importance of the traditions as an historical source, but also gave many hints for their critical use; an attempt, it is true, which has not removed altogether all credulity in the reconstruction of the ancient history of Islam. Since the great storehouse of the historical work of Ṭabarî became universally accessible in a completed edition, masters of historical and philological criticism, like Nöldeke, de Goeje, Wellhausen,[1] and their followers, have given us examples how we can gain from the narratives gathered by Ṭabarî, and which often represent the events from different points of view, by comparing them with other data, an historical stratification of sources which can be used to construct real history.

But here we have to do only with religious tradition, and we have to bring out how the criticism of the traditions now more and more prevalent makes for a progress in Islamic science not to be underestimated. In spite of the radically skeptical tendency, which is imposed on it as a duty by its scheme, its method has proved to be a good means to lead to a positive history of the early development of Islam.

With the sources of Islamic law our view of the law itself must stand in the closest connection. About that also we have a few words to say.

IV

The idea formed about these matters, which are generally considered the zenith of Islamic spirit, has undergone a total change in the last few decades.

No later than two centuries after the birth of Islam, in the first half of the ninth century of our era, we find a well-developed and thoroughly elaborated system of Islamic law, which has been long considered the ripe fruit of Arabian genius.

This prejudice is now altogether removed, the more so, since we have learned how much this system owes to Roman law, not only in its particular regulations, but also, which is far more important, with regard to questions of principle in methodology. The Arabic names themselves of the Islamic science of law and of its authorities,

[1] M. J. de Goeje, *Mémoire de la Conquête de la Syrie* (Leide, 1900) [*Mémoires d'Histoire et de Géographie Orientales*, no. 2, new edition]. J. Wellhausen, *Prolegomena zur ältesten Geschichte des Islam* [Skizzen und Vorarbeiten, VI]; the same: *Das arabische Reich und sein Sturz* (Berlin, 1902).

Our knowledge of the situation under the Muhammadan conquest with regard to the native Christians, especially in Egypt, and in general about the system of administration and economy in the primary Islamic state, has been, after the standard works of Alfred v. Kremer, considerably promoted by the study of the Vienna Papyrus documents (Archduke Rainer), in whose examination Professor v. Karabacek has led (Mittheilungen, Vienna, 1886 ff). We may hope that a further increase of our knowledge will be gained from the treasures acquired lately by Heidelberg University.

have been proved to be the translation of corresponding Latin words. No doubt you will comprehend that the progress made in our knowledge of this relationship in Islamic law could not remain without influence on our judgment of its nature.

But this again had to give way to new ideas also from another point of view. The system of the Muhammadan "Fikh," which, as "*rerum humanarum ac divinarum cognitio*," extending to all circumstances of orthodox life: to ritual law in the widest sense, to legal states of social life, to the laws of Divine service, almsgiving, fasting, pilgrimage, purity, to the laws of food, to the regulations concerning religious war, as well as to the fundamental doctrines of politics and the constitution of the state, to the laws of family life and hereditary affairs, to those connected with obligations, to penal laws and judicial proceedings — this whole encyclopedical system of religious legislature had been considered as an actual constitution of law, setting up the organism of the Muhammadan state and family life, elaborated by sagacious legislators according to the practical wants of one vast empire, and whose management and execution had been the object of the anxious care of Muhammadan authorities for thirteen centuries: in one word, as a Code Napoléon for Islam.

In later days, historical consideration has proved that only a small part of this system, connected with religious and family life, has a practical effect as of old, while in many parts of merely juristical character this theological law is entirely put aside in actual jurisdiction. You see that we have not here to do with a living system of law, and also that those students of law have been on a wrong path who, without looking at the character of Islamic law in the light of history and to the criticism of sources, make use of these dead codes as data for the knowledge of life, and base their studies of comparative law on this view.

To the same distinguished Dutch Orientalist, whose great work upon Mekka, beside the *Manners and Customs* by Edward Lane, presents the most reliable and attractive description of Islamic life and society,[1] we owe the total change, carried out in general by his works, toward a right knowledge of Muhammadan law, and also the reform of our general views about the character of Fikh. Snouck Hurgronje was really the first who set forth with great acuteness and sure judgment the historical truth, namely, that what we call Muhammadan law is nothing but an *ideal* law, a theoretical system; in a word, a learned *school-law*, which reflects the thoughts of pious theologians about the arrangement of Islamic society, whose sphere of influence was willingly extended by pious rulers — as far as possible — but which as a whole could hardly ever have been the real practical standard of public life. He finds there rather *a doctrine of duties*

[1] G. Snouck Hurgronje, *Mekka*, 2 vols. (Haag, 1888–89.)

(*Pflichtenlehre*) of quite an ideal and theological character, traced out by generations of religious scholars, who wished to rule life by the scale of an age which in their idea was the golden period, and whose traditions they wished to maintain, propagate, and develop. Even the penalties for offenses against religious laws are often nothing else but ideal claims of the pious, dead letters conceived in studies and fostered in the hearts of God-fearing scholars, but neglected and suppressed in life where other rules became prevailing. We find even in the oldest literature of Islam many complaints about the negligence of the religious law by 'Ulema in their struggle against the practical judges, that is to say against the executors of actual law.[1]

By this correct definition of Fiḳh as a doctrine of mere duties, the notion of its character appears in a new light. The scientific historical judgment of this discipline entered herewith into a new phase of which Snouck Hurgronje must be called the author.[2]

By another fundamental doctrine Dr. Snouck has also established a new point of view for the understanding of the legal life of Islam. It had indeed been known before that orthodox Islam has four "roots" in its law: first, the Koran; secondly, tradition; thirdly, deductive reasoning; and fourthly, the consensus of the orthodox community. It was understood also, in a way, that the validity of these sources of law followed each other in descending rank; that is to say, the consideration of the ecclesiastic consensus only occupied the place of a root of law, in case scripture, tradition, and reasoning forsook us. Now we know — and this knowledge of ours is one of the most important advances in the science of Islam — that the *principle of consensus* (in Arabic *Idjmâ'*) *is in verity the key to comprehending the phenomena of historical Islam.* Not so much the Koran and tradition — I have said elsewhere — is the standard for the management of religious matters, as the manner in which the words and sense of these two are interpreted by the common feeling and sense of the competent community.

This principle is the foundation and the legitimizing basis for the admission, even for the obligatory character of all innovations adopted by Islam in the course of its history. The admission of a certain dogmatic method in explaining Koranic words, the authority awarded to the acknowledged collections of authentic traditions, the statement of what has to pass for orthodox in law, the admission of newly arisen opinions and doctrines, in one word, the

[1] Cf. the present writer's paper, *Muhammadanisches Recht in Theorie und Wirklichkeit*, in Kohler's *Zeitschrift für vergleichende Rechtswissenschaft*, vol. 8.

[2] The principal theories of this scholar, explained in his manifold publications, are summed up in his essays, *De Islam* (published in the Dutch review *De Gids*, 1886), *Le Droit Musulman* in *Revue de l'Histoire des Religions*, vol. 37 (1897).

Basing on these methodical and historical principles, the Dutch scholar Th. W. Juynboll has given the most valuable scientific system of Muhammadan law in his work *Handleiding tot de Kennis van de Mohammedaansche Wet* (Leiden, 1903).

whole historical Islam — all this is founded on the normative power of the consensus.

So the whole prevailing theory and practice must trace its legitimacy, even its legality, back to this. If we had only the text of the Koran, the texts of the Sunna, and the results of deductive reasoning, with these three approved "roots" for the construction of law, we should have many riddles before us in considering the real religious life in Islam. How, for instance, could the worship of saints spread all over Islamic territory, with all the manifestations of anthropolatry attaching to it, and be brought into harmony with the uncouthly inflexible monotheistic theory on which the dogmatic of Islam is based? Are there not dozens of passages in the Koran and sayings in the Sunna to justify the fighting motto of the Wahhabites and of precedent puritans, who, in all these superstitions covered under the mask of piety, see only polytheism and mere paganism, by which the purity of the creed is dimmed and falsified? This would certainly be the case, if the great principle of Idjmâ' were not there to justify such outgrowths as being in accordance with righteous Islam, in spite of the contrast they form to the real doctrine of that religion. The general feeling of the believers has adopted all this, as well as many other strange things, so that there can be no "failing."

Without the consideration of this great principle orthodox Islam, as it is, would be quite incomprehensible to us, as according to the ideas of Islamic theology, orthodoxy consists in being in complete congruity with the consensus. One becomes a heretic by merely contradicting the *Consensus Doctorum Ecclesiae.*

You will often have to deal in the history of Islam with the paradox that a reactionary doctrine corresponds to the traditional ones and still does not pass for orthodox. Take, for instance, the Wahhabite movement. It is a protest against anti-Islamic innovations; no one can deny that its puritanism agrees more nearly with the fundamental doctrines of Islam than the abominations against which it fought. But nevertheless it is heterodox. It rebelled against developments which in the course of the centuries were admitted and sanctioned by the consensus, and for that very reason had the only legitimate claim to pass for the correct form of Islam, "*nam diuturni mores consensu utentium comprobati legem imitantur*" (*Institut.* I, ii, 9).

V

But although, particularly in the Sunnitic quarters of Islam, this collective, or, as it has been called, catholic trait has manifested itself, it must be remarked, on the other hand, that just as much feeling has been shown for the *individual peculiarities* of the single parts of that wide territory over which the creed of Islam has spread.

This is shown most plainly in the attitude to the old pre-Islamic institutions of religion and law. Even the canonical Islamic system has assimilated many elements from the native systems of the conquered countries. Many a principle of method, as well as many a detail of Islamic law, has been borrowed from the Roman law, as we have just observed, and hence has become canonical law in Islam.

Yet it is not this that I wish to develop here further, but rather a manifestation of provincial individuality in the Muhammadan practice, still perceptible in our days. In complete independence of the main stream of canonical law Islam tolerates in many chapters of civil and criminal law native law-customs, which are often directly opposed to the theologically fixed law. Therein the ethnographical individualities put themselves forth with their national traditions. These provincial customs are called the *'Âdât.* As Arabic philology attaches more importance now to scientific inquiry into popular dialects besides the classical language than it did four decades ago, in like manner the 'Âdât have been made a subject for collection and historical consideration within the period whose scientific progress forms the topic of this paper. But for our knowledge of them, our information about *living institutions* would be utterly deficient.

And as there is no observation more fascinating in the history of the human mind than that of the close tie uniting the present state of nations with the traditions of their past, notwithstanding all the historical changes undergone by them, in like manner there lies, in this kind of facts, an elevating perception that traditions which have lasted for thousands of years are reflected in these 'Âdât, over which the flood of history has been flowing, without sweeping them away. Even Islam, that overwhelming power, which, sword in hand, stormed the nations, could not destroy them.

In the customary laws of the present Muslim Kabyles of Northern Africa you will find characteristic elements in disharmony with legal Islam, which are identical with or at least kin to the customs and laws mentioned in antiquity in connection with the Numidians and Mauritanians. Those people are quite aware of their opposition to Islamic ordinances, which extends even to Koranic commands as if the Koran had not been revealed to them at all. According to the Kabyle legislation the feminine sex is entirely excluded from the capability of partaking in any inheritance; women are deprived of all rights as regards private law. As to the civil law of the Koran these Kabyles opine that its prescriptions were made for a country quite different from theirs, for a nation that had a different manner of life from their own.[1] But nevertheless they are partakers in the community of Islam and look for the Paradise of Believers.

We can therefore welcome as one of the most gratifying advances in

[1] Cf. *Z D M G*, vol. 41, p. 38 ff.

the knowledge of Islam, that more and more attention has been paid to the 'Âdât of the separate Muhammadan peoples. Chiefly in two geographical territories much fertile work has been done. I have just mentioned the population of Northwest Africa, being a territory where the French colonial administration has pursued the collection of the 'Âdât with great zeal. The three volumes by Hanoteau and Letourneux, *La Kabylie et les coutumes Kabyles* (Paris, 1872–73), is a classical work of codification of Berber custom-law. As regards special studies, still more extensive is what Dutch scholars have done in the Indian insular colonies of their beautiful fatherland, for the knowledge of the 'Âdât among their Muhammadan subjects. The description of the religious life and social customs of the Atjehs (1893) and of the Gajô (1903), given to us by Snouck Hurgronje in two of his most instructive books,[1] offer undoubtedly the most exact treatise on the 'Âdât in countries whose formal law is Islam. The scientific reviews dedicated to the investigation of the philology, geography, and ethnography of Dutch India[2] are rich in fine and thorough investigations into these conditions. I can well mark these important researches and gatherings as a welcome advance in our modern scientific study of Islam, though they have mostly kept themselves rather in the frame of ethnography.

Equally rich in stimulating elements are the data of provincial peculiarities with which we meet in matters of creed and religious exercise. Here is a rich crop for the chapter of ethno-psychology and religious history which can be headed *Survivals*, to use a term brought into vogue by Edward B. Tylor. We have examples of direct remains of pagan worship in tribes, outwardly submitted to Islam. Al-Bekrî, an Arabic geographical author of the eleventh century (died 1094), transmits to us in this relationship remarkable facts about North African Islam. In his time many a Berber tribe made offerings to Roman monuments, prayed to them for the recovery of their sick, and felt grateful to them for the prosperity of their belongings.[3] This rather indefinite statement is completed by statements from the same author quoted by Yâḳût, that three days' journey from Waddân in the territory of Fezzân, south of Tripolis, — now a place inhabited by an enormous number of Shurafâ,[4] that is,

[1] Snouck Hurgronje, *De Atjèhers* (Batavia-Leiden, 1893–94), 2 vols. — *Het Gajoland en Zijne bewoners* (Batavia, 1903).

[2] Let us mention in the first place the volumes of *Bijdragen tot de Taal-Land-en Volkenkunde van Nederlandsch-Indië*, published by the Royal Institution for Dutch-Indian Studies. For special chapters on the 'Âdât of Java and Madura see Van den Berg, in the vol. 1892, pp. 454–512, and 1897, pp. 83–181. In the first note of the former paper some previous literature on the 'Âdât is mentioned. J. A. Nederburgh began in 1896 to publish in Batavia a periodical *Wet en 'Âdât;* but it was only carried on till 1898, in all, three issues.

[3] *Notices et Extraits des Manuscrits de la Bibliothèque Nationale*, XII, p. 458.

[4] Cf. Rohlfs, Kufra (Leipzig, 1881), p. 147 ff. 176; Mohammed b. Othman el-Hachaichi, *Voyage au pays des Senoussia* (translated by Serres and Lasram, Paris, 1903), p. 134 ff.

pretending descendants of the Prophet's family, — there was standing on a hill a stone idol called *Krza* (the vowel between *r* and *z* is uncertain). The neighboring Berber Kabyles made pilgrimages to this idol, brought it sacrifices, and held rogation ceremonies in time of drought. I am no friend of mere hypotheses and bold identifications of proper names. Nevertheless, in mentioning this African idol, I cannot help throwing out the query whether we have not before us in this *Krza* the remainder of the name *Gurzil*, mentioned by Corippus in his *Joannide* (II, vv. 109–110, 405; IV, vv. 669, 1139), as the name of an old Berber idol, identified with Jupiter Ammon, and brought into connection with an oracle.

At the same time a Berber tribe in the Atlas Mountains is said, by the same Al-Bekrî, to have worshiped a ram.[1] And even in the fifteenth century Leo Africanus can tell us about customs of North African Berbers, which he explains as remains of ancient African paganism which had not disappeared in the times of Islam.[2] The worship of the ram in Muhammadan North Africa can be brought into analogy with a parallel from quite the opposite end of the territory of Islam. Al-Dimishkî, a cosmographic writer of the thirteenth century (died 1256), informs us regarding the province of Ghîlân, Northwestern Persia, along the shores of the Caspian Sea, that the Muhammadans of that country labored under materialistic ideas about the Deity. They went so far as to conceive of God as riding at midday on a white ass. And in fact they bestowed great honors on asses of that color.[3] Indefinite as this remark of the Arabic author may be, at any rate it serves us as testimony of well-pronounced animal-worship among a population who no doubt esteemed themselves orthodox adherents of Islamic faith. Perhaps there is some relation between this superstitious cult of a *white* ass and the ideas about the mythological *Kharem ashavanem* (probably a white ass) of the Zarathustrians (*Bundahish*, ch. xix).

We have thus seen solid pagan remains in the midst of Muhammadan populations. But such religious survivals are not attested of former times only. In different parts of the Islamic world paganism, with uncultivated tribes, in its more or less original forms, has outlasted the ruling influence of Islam, although that was established centuries ago. A remarkable instance in the religious conditions of Muhammadan Madagascar is given in the description supplied by the French Consul, M. Gabriel Ferrand, who has with great industry and zeal revealed to us Malagasy philology and ethnography. Although the Sakalava people have adhered to Islam for three centuries, "they have adopted Islam without bringing any notable change to their

[1] Bekri, *Description de l'Afrique septentrionale* (ed. de Slane, Alger, 1857), p. 161, 4.
[2] *Descriptio Africae* (ed. Antwerpen), p. 112.
[3] Dimischki, *Cosmographie ed. Mehren* (St. Petersburg, 1866), p. 226.

former customs and manners." Allah and the Prophet take a prominent place in their religious ceremonies, yet still inferior to Zanahatry and Angatra, their national divinities. Their life continues to be ruled by the observation of their tabu views, called *fady* in their language, and their magicians pursue undisturbed the pagan customs of their ancestors, with the only difference that this sorcery is practiced under the standard of *Allâh akbar.*[1]

This sort of paganism surviving under the shield of a Muhammadan exterior is one of the most decisive factors in the *individual* formation of provincial Islam, and has resisted all exertions of clerical influence enforcing itself from abroad. The following fact, observed in the Caucasian Ingush tribe, can be considered as typical for the coating of pagan reminiscences with the superficial forms of Islam. We choose our examples with intention from parts of the Muhammadan world separated from each other by great distances. The Ingush are Muhammadans in name; but as with most peoples inhabiting mountains, their ancient paganism has conserved itself under their exterior Islam. Hahn, who is best acquainted with the customs of these populations, reports that the worship of the idol Gushmile is almost universal among them and explains how this worship can agree very well with that of Allah. The Muhammadan Galgai (in the Caucasus) pray only by night in front of quadrangular stone columns of the height of a man, erected on hills and in cemeteries. Remarkable is the worship of skeletons in an ossuary near Nasran. The skeletons are said to come from their *Narthes* (ancestors) and to have begun to decay only since the arrival of the Russians. These objects of worship are *covered with green shawls from Mekka.*[2] This green shawl from Mekka, with which the objects and forms of the old traditional worship are covered, interprets very fittingly the ethno-psychological process involved in the Islamification of such populations. Green is the Prophet's color. Under the "green shawl" the old national *religious 'Âdât* continue to live.

Even in places where the Islamic ingredients have opposed the popular creed with greater force, this national element lends an individual living color, reflecting the special character of Islam in the different provinces to which it extends, and rendering prominent its locally defined peculiarities.

The minute observation of such facts, on the other hand, has also been useful in reconstructing elements of ethnical religions, which were extinct long ago in their original form, but have been preserved under a superficial Muhammadan veil up to the present day. Following this method Samuel Ives Curtiss, the distinguished professor

[1] *Les Musulmans à Madagascar et aux îles Comores*, III (Paris, 1902), p. 80 ff.
[2] Hahn, *Bei den Pschaven, Chevsuren, Kisten und Inguschen*, in *Beilage* no. 101, Münchener Allgem. Zeitung, 1898.

of Chicago, was able to construct from the present religious customs of the Bedawîn in Syria, Palestine, and the Sinai Peninsula the primitive rites of Semitic religion in a book[1] which fully met the approbation of learned circles on both sides of the ocean. Further researches following the way he took will, no doubt, add to his accumulation of evidence.

Some remains of ancient libation customs have, for instance, been preserved in a communication drawn from the book of the late Egyptian Minister *'Alî Bâshâ Mubârak*, which is most ample in this respect.[2] In the neighborhood of Ḳastal, in the peninsula of Sinai, is the tomb of a Shaikh Marzûḳ al-Kifâfî, lying on the Egyptian pilgrims' road. When passing this grave, pilgrims are wont to break glasses filled with rosewater, prepared beforehand in Cairo for that purpose, and to pour the odorous contents over the grave-hill of the quite unknown shaikh. The ancient Semitic ceremony of libation is here extended to an unknown personage transformed into an Islamic saint.

The festival-cycle of universal Islam, with its movable lunary calendar, has no connection at all with the life of nature. The feasts are not spring or autumn feasts; they are bound to days in the calendar which are subject to migration through all seasons. This want is supplied in the popular religious exercises by adopting old pre-Islamic feasts and giving them an Islamic stamp. The Nile, "God's gift," plays, of course, no rôle in the canonical books of Islam. But in the popular religious customs of Egyptian Islam nearly the same reverence is rendered to it as in the land of the pagan Pharaohs, with the difference that everything is turned Islamic and interpreted in that sense. And likewise in the practice of religious customs in Islamic Egypt, as well as in many other countries, pre-Islamic customs and pagan religious conceptions have been adapted and blended with Islamic sense, apart from the official worship, in different circles. The pagan worship of trees, stones, wells, and demons has been preserved; so within the official religious worship numerous superstitious customs of the national pre-Islamic traditions have survived. There is no department in religious life where such traditions present themselves in a more original way than the rites of rogation for rain (*istiskâ*), which have shown themselves to be real depositories of pagan witchcraft.

You will not be astonished at the toleration of much pagan custom within official Islam, if you consider that in the holiest spot of Islam, "God's House" in Mekka, the fetishism exercised at it

[1] *Primitive Semitic Religion of To-day: a Record of Researches, Discoveries, and Studies in Syria, Palestine, and the Sinaitic Peninsula.* (New York, 1902.) German translation: *Ursemitische Religion im Volksleben des heutigen Orients*, with a Preface by Professor Graf W. Baudissin (Leipzig, 1903).

[2] *Al-Khitat al-djadîda.* Cairo, 1304–06 (1886–88), 20 volumes. Cf. XIII, p. 20.

with the "Black Stone," the formalities of the holy pilgrimage are all *sacra* taken over by Muhammad himself from the ancient Arabian religion, over which the veil of monotheism has been spread.

I esteem the cultivation of this realm of research and the insight obtained from it into the *individualism*, stamped differently according to provinces upon the catholic Islam, to be one of the most valuable acquisitions of the new Islamic studies. We are thus introduced to the knowledge of *living Islam* and to the historical and ethnographical factors of its manifestations of life. We have passed beyond Reland's theoretical Islam, "*uti docetur in templis et scholis Mohammedicis*," with a mighty step.

A very peculiar field of remainders turned with an Islamic sense is the *worship of saints*. In the forms of this manifestation of religious life, the remains of the old times have taken shelter unknowingly. As in other world-religions, the Muhammadan saints also are often transformed successors of ancient objects of worship. In the local worship of saints, as we just remarked of the tomb of Shaikh Marzûḳ, near Ḳasṭal, remains of pre-Islamic rites are mostly preserved.

Islam has taken hold even of Buddhist sanctuaries, in countries formerly inhabited by followers of Buddha, and interpreted them to suit its own sense. Buddha's footsteps in Ceylon have easily become the footsteps of 'Alî; a jug of Buddha's venerated in Kandahar has been transferred to Muhammad. Grenard, companion to the unfortunate explorer Dutreuil de Rhins in his East Turkestan travels and elaborator of their results, could say with right, about the Muhammadan holy places of pilgrimage in ancient Buddhist territory, that the holy personages worshiped there are mostly *un avatar Musulman de Buddha.*[1] This tenacity of local cults on formerly Buddhistic ground occupied by Muslims has been since confirmed on a larger scale by my fellow countryman Dr. M. A. Stein, in his wonderful explorations in Chinese Turkestan.[2]

It results from all this that it is especially in dealing with the local and provincial worship of saints that we can obtain the information and collect the materials which we have pointed out in the precedent notices as objects of study in religious history. We do not possess a *Legenda aurea* of Islam, nor do Bollandists of Islam come to our help, though the sphere of this religion would be extremely rich in materials for such collections.[3] We have to gather our materials ourselves with great pains from a wide branching original literature and from the information furnished by observant travelers. Large tracts of Islam are not so well worked for such a crop as we might

[1] *Mission scientifique dans la Haute-Asie* (1890–95), III, p. 46.
[2] *Sand-buried Ruins of Khotan* (London, 1904), pp. 180 ff.; 226; 329.
[3] C. Trumelet, *Les Saints de l'Islam, Légendes hagiologiques et croyances algériennes.* — *Les Saints du Tell* (Paris, 1881).

expect from the means and the easy opportunities offering themselves to explorers just there. I think chiefly of India here. Much preparatory work is done for Egypt, where the learned statesman already mentioned has furnished most valuable materials in his topographical description of the country. Also for Palestine and Syria a considerable amount of careful work has been done in this respect by the coöperators of the Exploration Funds. And extremely useful are the contributions being continually presented of late by the Algerian school,[1] following the guidance of René Basset, in this chapter of individual formations in Maghrebine Islam, on the relationship of the special worship of saints in this quarter of Islam to the old traditions of its population.

VI

In our flying review of the progress of Islamic science, we could not, within the space we can justly claim for it here, possibly discuss all the questions whose examination marks the progress which this science has taken in the later times. Especially we must regret that we could not devote a special chapter to that ample increase which the knowledge of Muhammadan sects has gained lately. In this respect we should have to mention here among many others in the first place the exhaustive researches of Edward G. Browne on the Bâbî movement in Persia.[2]

It could not be our intention to exhaust the task set before us in all its details and to enter into all the starting-points which would present themselves to us in exposing our theme. We can point out only the most prominent points of view from which this progress has been carried out.

What I intended to show you and that of which I desired to convince you is chiefly this: that the undeniable intrinsic progress of Islamic studies has manifested itself in the following ways in the last decades:

(1) The deeper knowledge of *ancient Islam* and of its *constitutive factors;*

(2) the methodical treatment of the *documents* reflecting *the development* of Islam;

(3) the truer insight into the character of the *institutions and laws* of Islam;

[1] We will point out here in this order of studies the remarkable essay of Doutté, *Notes sur l'Islam maghribin. Les Marabouts* (Paris, 1900), and other contributions of this scholar.

[2] *A Traveller's Narrative written to illustrate the episode of the Bâb* (two vols.), Cambridge, 1891; *The Târîkh-i-jadîd, or New History of . . . the Bâb:* Cambridge, 1893, and many contributions of the same scholar on Bâbî history and literature in the *Journal* of the Royal Asiatic Society. — Cf. also the valuable publications of the Russian scholar A. H. Toumansky on the religious books of the sect.

(4) the increasing estimation of *individual formations* within *universal* Islam; and

(5) the consideration of the *after-effects of pre-Islamic traditions* upon those popular and individual formations.

VII

Our review would be still more defective if we did not add one more remark in appreciation of a means which has helped and still helps us in a valuable way to produce significant progress in our understanding of Islam. I have in mind the important *documents of Islamic religious science* which are within our reach through the labors of printers in the Orient itself. He who would in the sixth decade of the past century study, for instance, one of the most prominent monuments of the religious spirit of Islam, the *Vivification of Sciences*, by Al-Ghazâlî, or other important works of this author, had to seek access to the manuscripts of more or less accessible libraries. Among the great collections of traditions, others than Bukhârî were mostly known only by names or from quotations. Only a few selected men had admittance to these others, no less important. It was seldom that an Occidental scholar got sight of the mass of commentaries, in which an inappreciable philological material, a valuable apparatus for text-critical and exegetical purposes is accumulated, which is so precious in the very field of traditions. The oldest documents of the literature of legal institutions were thought lost. The works of the theological scholastics, whence we take our information about the nature and history of the dogmas of Islam, were only known to a defective extent. All this has been done away with for nearly three decades and a half, by printing in Islamic countries: Turkey, Egypt, Northern Africa, India, Persia. As even the strongest bulwark of ancient Islam, the holy city of Mekka, had to permit telegraph wires to enter her consecrated walls, in like manner she has become one of the centres of Islamic printing. Those publications have furnished us with some of the most important primary sources, sometimes in numerous bulky volumes whose publication could never have been thought of in Europe or America. And even that the most capital commentaries of the Koran, for example the great exegetical work of Ṭabarî in thirty parts and the "Keys of the mystery" of the great dogmatic authority, Fakhr al-dîn al-Râzî, in eight bulky volumes, have become accessible to our scholars, is due to the activity of Oriental typography.

In view of the profit gained from such publications, we excuse willingly the confusing and for our eyes most painful way in which the Persian and Indian lithographs present the explanatory glosses and marginal commentaries. The easy possibility of studying these

works nowadays, and rendering them profitable for our researches has been a strong factor in the progress of the thorough and special knowledge of the historical development of the doctrines and institutions of Islam.

That the scholars of the Orient may also profit from our critical method, that they, to whom we owe so much splendid material, may, by intelligent collaboration in our endeavors, contribute to the promotion of scientific work about their own past and present, must be our wish.

THE PROBLEMS OF MUHAMMADANISM

BY DUNCAN BLACK MACDONALD

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In the great disadvantage which must accrue to me — high honor though it may also be — in following the most eminent living authority on the civilization of Islam, there is at least one point of help. I need not spend time now in demonstrating that Islam is an essential unity and that it is practically impossible to separate the history of its religion from any other element in it. The whole social complex in all its manifestations is religious and the religion of Islam is Islam itself. We must frankly accept this and state our subject, not as any impossible questioning on the history of a religion in our narrow sense, but as a consideration of the problems as to the history of the Muslim organism which still are left unsolved.

Nor need I lay stress on the comparative impossibility of even this subject in the time at my disposal. Problems are still thickly sown in the path of the investigator of Islam. Not simply details are undeveloped; broad trends and movements remain unconditioned and inexplicable. The student finds an abundance of concrete facts, reputed and otherwise; but working hypotheses, not to speak of demonstrable and demonstrated systems by which these facts may be criticised, correlated, and explained, are conspicuously lacking. Often the presumed facts, even, fail him. They are still buried in Arabic sources, awaiting the special and rare genius which can recognize and bring them forth. Such Arabic sources, too, are so far only in part accessible. Of those which survived the storm and stress of the Middle Ages, the raids and conquests of Timour and Chingiz Khan, the unending civil conflicts of the Muslim states, a comparatively small though rapidly increasing portion has yet attained to print. All these elements in research, the disinterring of manuscripts, the presenting of them to the world of scholars, the examination and study of them for materials, and the final rearing of the lofty historical structure, philosophizing and conditioning

movements and rendering intelligible events — all these elements and processes are still backward to a degree; and the last, it may safely be said, has hardly yet begun. Dr. Goldziher, if he will permit me the reference, has given us volumes full of the richest materials for such a history, opening up and illuminating dark places and driving shafts where none had gone before; if we understand the development of Muslim jurisprudence, the system of Muslim tradition, and the essential outlines of Muslim theological strife, it is due to him. But we still look vainly to him for that great history of Muslim thought and institutions which only he among living men can write.

Permit me, then, as that book is not yet before us, to suggest some few of the darknesses in which we still move. Thereafter, I will go on to state what is for me the central problem of all Islam, a problem absolutely unsolved and seldom fully stated.

Of these minor obscurities, some of the thickest cluster round the beginnings and pre-natal conditions of Islam. No one has yet made plain to us the different ferments working then in heathen Arabia. We know that Christianity, Judaism, Zoroastrianism, and various phases and degrees of idolatry were there. But — to take Christianity — we do not know with any precision what sects and forms of Christian thought had occupied the desert, what hold they had there taken; to what degree, if at all, they were genuinely Arabic in language and not rather mere outliers of the great Syrian church. To take Zoroastrianism, it is only of late that its hold upon southern Arabia has become plain, and its influence on the thought of Muhammad and the vocabulary of the Qur'an a possible hypothesis. To take primitive Arabia — how far had it reached the conception of the one, absolute Allah, the Ilah, God Most High? In a word, how far was Muhammad's Allah pre-Muhammadan and Muhammad himself an exhorter on things known but despised? And when we come thus to Muhammad himself, the problems only thicken. Lives of him have been written in abundance, greatly imaginative for the most part, but it is hardly credible that we have not as yet any systematic theology of the Qur'an, only investigations of specific points. Even a modern commentary on the Qur'an is lacking, largely, perhaps, because the labors of the Muslims themselves had been so great that they are not yet digested. Its most multifarious vocabulary, too, has been attacked at many points and with many theories, but an adequate lexicon of it remains a task for some future scholar. It will be for him to weigh the influence of Syriac, Greek, Ethiopic, and Persian words and ideas on the language and thought of the desert and the brain and imagination of Muhammad, ever greedy of the strange. And later, too, when the early Muslim church was striving with the contradictions and obscurities of that Qur'an — knotted and twisting as Muhammad's own mind — and there were develop-

ing in that church the fundamental conceptions of Islam, we know little what were the stranger influences upon them by which they, in great part unconsciously, were swayed. Murmurs we hear of John of Damascus and his school of theology, the Euchites and the Hesychasts, the pseudo-Dionysius the Areopagite and Stephen bar Sudaili drift dimly across the stage. That the Christian λόγος doctrine is at work is certain, and Christian conceptions of the ascetic life, in spite of the denunciations of Muhammad, sway Islam as they had swayed heathen Arabia. But how these worked, what precise kinship of doctrine they produced, what was the extent of their influence, what the place of that influence and its ποῦ στῶ, none has yet arisen fully and clearly to answer these questions.

And why it has been so is simple enough. The man who studies Arabic and its literature has small leisure for anything else. Yet Arabia, through all this period through which we have run, calls for scholarship of the most varied character. He who would study the pre-Muslim times must know the theology of the early Syrian church in all its welter of sects and heresies; he must be able to detect the influence of Judaism and discern its precise kind and phase; he must be able to disentangle from the old Arabian poems all their religious references and, in the light of Semitic heathenism and more narrowly of the inscriptions of Syria and Arabia, to build them into a mirror for their time; he must know the later Zoroastrianism, its theological concepts and phrases; the Ethiopic language and the theology of the Abyssinian church must be simple to him; even Egypt, both Coptic and Greek, will not come amiss — cannot be wholly neglected; in truth, this island of the Arabs, set amid its encircling sands, was bare to the most mingled winds of doctrine that ever beat upon a land and people.

Again, he who would know Islam itself in its early days must advance still further on all these paths and be able to trace all their influences. Especially he must have absolute control of the theology of the Greek church, both its systematic theology and the mystic and ascetic life which was its soul. Further, another constellation of influences will rise upon his horizon and lead him still on into far lands. India and Central Asia, through ascetic Buddhism, will begin to work on Muslim thought. The threads of life run out now to Balkh and Samarcand, and there is need of the Sanscritist and the student of Indian religions to play the interpreter.

But all this, it is plain, no one brain can handle. So it meets well the object of this congress to emphasize the absolute fact that little true progress can now be made in the study of the Muslim development without collaboration. None can be an Arabist and be at home in all these fields. Few who know any of these will undertake as well to learn Arabic and penetrate the mystery of the Muslim life

and faith. For it is impossible to lay too great weight on the fact that there is not only the question of learning a most complicated and endless language, but that the even slower mastery must be reached of a whole habit and attitude of mind, foreign to us at every turn, though from time to time misleading us with the *ignis fatuus* of a deceptive similarity to the Old Testament and its ways.

Again another field. Since the Middle Ages Europe has known, if it has not always acknowledged, its debt to Islam as intermediary of the philosophy of Greece. That general fact stands firm, however it may be modified and limited. Yet, until the very last few years, almost nothing has been done to trace the workings, the development, and the result of that philosophy in Islam itself. In the current manuals of philosophy and in the encyclopedias a few names of so-called Arabian philosophers have found a place, and a treatment marked in general by extreme ignorance. Every one has heard of Avicenna and Averroes, but who has traced out their systems and read their secrets? A mere handful of Arabists of eccentric tastes have dabbled in such lore. At the present time, two or three extremely well-equipped young men are at serious work upon it. But, in general, philosophy in Islam has been treated either by those who were absolutely ignorant in Arabic or painful amateurs in philosophy. Yet the importance of the subject, both for the history of civilization and the development of thought, can hardly be overestimated. It is already, for example, becoming evident how barren philosophy, in the strict sense, was in Islam itself; how little, if any, change or advance was made from the Greek positions. But it is also becoming plain how completely it fell to Islam to carry, in this strangely helpless fashion, the torch of philosophic thought through many dark centuries and kindle anew in Europe the idealistic flame which burns even to our day. It is largely due to the elective affinity of its intellectual fervors that the dead school of Plotinus won the field, and that the simple nominalism of our times was delayed for so many centuries. Little by little, too, as our knowledge spreads, we are discovering strange and close agreements, even to phrases, between Muslim and Christian thinkers. Threads of direct connection are being found, running down even to Pascal; and the general trend of development which lead to pragmatism and the position of Mr. William James has its parallel in the theology of Islam. For it is worth noticing that the independent intellectual life of Islam and its only original systems are to be found, though under philosophic stimulus, not among the philosophers themselves, but among the theologians. In that development, paradoxically enough, came all that did not exist already in Aristotle and the neo-Platonists. Here, then, is another field on which hardly more than a beginning has been made, and from which much may be expected.

Nor is the problem here so hard; for an Arabist may easily be a student of philosophy as well. Yet the demand is absolute that the worker there should have the most complete knowledge of Aristotle and Plotinus.

Again another field which awaits workers is that of folk-lore and the story. The names can be counted easily on one hand of those folk-lorists who are Orientalists as well. Only within the last few years have the folk-tales of Syria, Egypt, and North Africa been touched. On the Muslim side the problem of the Mediterranean people is as yet almost unconsidered. One phase of it, the history of so fundamental a collection as *The Thousand and One Nights*, with its many folk-tales, is still in great darkness. One chapter could undoubtedly be illumined by the folk-lorists of Spain; a Spanish period in its history or a Spanish version is a large possibility. On the other side, what light, it has still to be asked, can Oriental learning throw on so unique a survival in Europe as *Aucassin et Nicolette?* What real parallels do the romances of chivalry show to the stories of the knights of the desert, and do these make necessary a connection of origin? This, it will be seen, opens the far wider question of the intercourse generally between Christendom and Islam in the Middle Ages, one on which I must enter immediately. Only, on this narrower matter of folk-lore, the necessity of coöperation is most pressing, and its possibility is also greatest. Each can bring to the great heap what he has gathered in his own field; the assorting will prove simple enough. Gradually, too, each will learn what his comrade needs and be able to put and answer the questions which tell. And in this contact, I cannot refrain from mentioning the *Bibliographie arabe* of Professor Chauvin of Liège; what is being done in it for folk-lore can surely be done, though in different ways, for other fields.

Again may be mentioned, if only as an outstanding specimen of similar questions which lie scattered through Muslim history, the problem of the origin of the Fatimid dynasty. Did that dynasty really draw its blood from Ali and Fatima, the daughter of the Prophet, or was their claim the most gigantic fraud in history? Further, the question spreads wider and goes deeper than any mere squabble of genealogists, — whether that dynasty was of prophetic descent or not, what were the objects, the means, the ideals of the leaders of the movement? Was it a vulgar conspiracy to attain a throne, actuated by hatred of Islam and the Arab domination? Or was it a conspiracy of philosophers and philanthropists to bring about, by fostering science and independent thought and by gradual weakening and overthrow of popular religion and superstition, a millennial age in the earth? Were its leaders soldiers of fortune, or were they high priests of science gathering under their guidance and control all the free investigators and thinkers of the time? Was it as

though the French Revolution had been matured and carried through by an international secret association of philosophers and scientists, with a view eventually to free the whole world from all other control than that of philosophy and science? If we can imagine that the Encyclopédists had not simply contributed explosive ideas to their time, but had formed a vast and all pervasive society, honeycombing the ground under the ancient institutions and ideas, we shall have a close analogy to this hypothesis. In the atmosphere of the time, there is much which points its way, and the evidence for it is steadily growing, mad as it may seem. We have learned, for example, to recognize in the Assassins, who sprang from the Fatimids, no simple sect of stranglers, or Vehmgericht of peculiar ability and vitality, but also a fraternity which, in spite of the truth of its name, cherished experimental science and investigation in its mountain fortresses. In contact, too, with both Fatimids and Assassins we find the purely philosophic fraternity of the Sincere Brethren of al-Basra, which was founded to promote study and education among the people. Nor is this question simply of Muslim interest. It should lie close to every student of medieval Europe. For it may be asked, what part in this scheme had the Templars and the other knightly orders so freely accused of heresy and unbelief? Were they, too, late pupils of the Fatimid propagandists? Did the tentacles of the conspiracy run, in half-unconscious growth, out into Europe? No one who has come to recognize how closely Europe and medieval Islam were interdependent, in strange, underground fashions, will venture to deny this offhand. The question is there, and can be solved only by combined studies. It would be hard to lay too great stress on the close inter-relation of these fields of investigation and on the necessity of united and coöperative efforts.

Another penumbral patch in our knowledge of Islam, which may be worth a bare mention because it, too, emphasizes the necessity for a mutual understanding and coöperation, lies in the history of the mystical development. Mysticism, in Islam, ran early to asceticism; somewhat later to pantheism; later still to mingled schools exhibiting now one, now the other side. As written in Arabic, it tended to cling to the earlier, more conservative phase; in Persian and Turkish — which always follows Persian — it drifted off in fanciful dreams of the identity of the individual, lost in the One. But it is comparatively rare to find a Persianist who is equally read in Arabic, or an Arabist who can recognize at once the source of a Persian reference or idea. As a consequence, the tendency has been for these schools to be studied by different men, who were in little touch with one another's labors, and their presentation of the different phases has tended to one-sidedness. When students of Islam, then, in its different languages come together; when they, further,

come into contact with the students of Buddhism and of the mysticism of India generally; when the connection is fully made with the other great root in neo-Platonism and with the other great development in the idealistic, quietistic, and pantheistic schemes of Europe, the way will be paved for the great history of the whole development of mystical thought and aspiration, which is perhaps still the obscurest side in the whole history of religion.

But that is enough of such details. Gigantic and weighty as they are, they must not make us lose sight of the fact that at the very centre of Islam there lies a single problem, as yet untouched but vital for our view and for our understanding of that faith. To put it in a word, it is the fact of Islam itself — how we are to understand it, rationalize it, explain it. This problem, though it is really one, may be divided, for clearness of statement, into three. (1) How and why did the Muslim civilization arise? (2) Why had it no permanence? (3) In what ways and to what extent did it affect the civilization of Christendom?

One of these questions may, perhaps, seem so simple as to be absurd; another may seem a case of question-begging; the third may seem not worth asking. The Muslim civilization arose, I may be told, through the genius and victories of the Arabs. Again, there is no question of lack of permanence; it is there now. Lastly, its effect on the civilization of Europe is well known, and — according to the answerer — was infinitesimal or almost infinite.

Let us get down to the facts in the case. In the year A.D. 622, Muhammad, who claimed to be a prophet like the prophets of the Old Testament, migrated through fear of his fellow townsmen from Mecca to Madina, then called Yathrib, and there founded a theocratic state with himself as absolute head and interpreter of the will of God. His mission, he proclaimed, was to reduce the world to the faith of Islam, the one eternally true religion, which he had been sent to revive. His commission gave him the right to enforce his claim to the obedience and faith of all the peoples of the earth. At the same time Arabia was more or less in a state of ferment. The tribes were restless; the time had come for them to burst the bands of the desert and make one of their great raids on the adjoining lands. They had done this before, time and again; it is part of the history of Arabia. On this occasion, Muhammad and his successors drew them together with infinite labor and skill, inspired them partly with a belief in themselves, in their nation, and in their national prophet and his faith, partly with a vision of an immensity of booty, and launched them on the world. It was such a raid as Arabia had never known before, but still it was a raid. It lasted for years; it swept to Samarcand, to Spain, to the passes of the Taurus, to the cataracts of the Nile. It changed the map of half the world, and when the

wave ebbed again, the old civilization, the old states were gone, and another civilization, new and very strange, had come in their place. True, the leaders of the raid knew what they would have; knew that they had come permanently and tried to hold the tribesmen to that knowledge. But that could not be. There were too few of them, enough to conquer but not enough to swamp the conquered peoples. They died away among those peoples and left there some tinge of Arab blood; or, being nomads of the desert, they yearned for their sands and drifted back to their own land, or whatever other North African wastes they could find. But how was the civilization which arose — the Muslim civilization — akin to them? What did they give to it, and what part had they in it? For one thing, they gave to it their language, that tongue of the Arabs which may well compare in dignity, elaboration, and flexibility with that of the Greeks. The language carried with it certain literary forms in which part, at least, of the Muslim world was long cramped. Thanks to it, for example, the Egyptians forgot the lessons of the Greek poets and came to believe that a story could not be told in verse, while the Persians, who revived their own language again to literary use, had no such scruples. To the Muslim civilization the Arabs gave also the great conception of Islam and the traditions of the character and teaching of Muhammad as contained in the Qur'an and in the stories of his sayings and doings. Certain conceptions, modes of life and thought, of social relationships and ideals they may also have given, but all these, too, could be entered perfectly under the fact of Muhammad and his teaching. That seems to have been the sum of the Arab contribution. We hear often of Arabian science, of Arabian philosophy, of Arabian art. There was never any Arabian science, philosophy, or art. These arose in the civilization which followed the great Arab raid; they never flourished on Arabian soil; they were never led or advanced by Arabs. The most of culture which the Arabs themselves produced was the Umayyad court at Damascus, and when the Umayyads fell before the Abbasids in A.D. 750, after a rule of more than a century, the Arab period closed for Islam. But that court was only a glorified revival of the pre-Muhammadan courts at al-Hira and Ghassan, and fostered only the civilization of the desert. There we hear the last strains of the old poetry, and hear little but such strains. The theologians, it is true, were at work; the system of the great doctor of the Greek church, John of Damascus, was making itself felt; the things of religion were silently but surely developing. But of that rich blossoming time of prose literature and of the newer poetry, of science, philosophy, and art, which followed under the Abbasids, we have no trace. With all that, the genius of the Arab race had no kinship, and now the Arab race was to fade from the scene.

After them there enter the Abbasids. They, too, were Arabs by blood; but they, at least their earlier rulers of genius, read aright the signs, and saw that no Arab kingdom could stand by itself. The Constitution of Umar, which regarded the Arab race as a people chosen of Allah to do His will, had broken down after only a few years. The idea of the Umayyads, which regarded the kingdoms of the world as created for the enjoyment of the Arab race, had vanished in tribal strife. The non-Arab Muslims had come to their own again, and by sheer weight of numbers, knowledge, and skill had compelled recognition and reckoning. That they had from the Abbasids. Their capital, Baghdad, founded in A.D. 762 by the foresight of al-Mansur, was to draw together and weld into a whole three at least of the Muslim races, the Arabs, the Persians, and the Syrians. The plan of al-Mansur succeeded in great part. The Muslim Empire was founded as a thing not necessarily Arab or Persian or Syrian. Islam, in conception so free, but for long politically so limited, had now broken its national bonds, and become in a true sense a universal religion and a world-power. Then, in astounding outburst, there came the Muslim civilization.

It is hard to describe this period of culture in terms that will not sound strained and even hysterical. For the first hundred years of the Abbasid Khalifas we have a veritable Golden Age in the intellectual life. These Khalifas held stiffly to Islam, but they fostered, too, the sciences and arts. All the thought of the Greeks, coming in many channels, was accepted eagerly by them. Their people was urged to study, to research, to production; and the books which followed showed that the urging had effect. It was a period of literary earnestness and literary productiveness such as has seldom been. For its mate we have to look to the great eras of the world when awakening times seem to have come. After a century or so, it died away, but the intellectual life still went on, though led by fewer and in more isolated fashion. Then there would come another period at some other court — rivaling but hardly equaling the first in brilliancy and originality. Thus the torch has been passed along through a series, at long intervals, of such ages of reviving energy. But after that first Abbasid period we find the mass of the people taking little part in these.

Here, then, we have the first element in our central problem. How are we to condition and explain this outburst? To ascribe it to the Arabs themselves, in any direct sense, is evidently absurd. Even to imagine that they, as a virile element, quickened into life for a time the dying or, at best, comatose races which surrounded them, seems hardly more satisfactory. It would be difficult indeed to find in history a really parallel case to support such a view. Furthermore, we find them at every turn forced back for intellectual aid on these very races. Even their ministers and the officials of their governments were

Persians, Turks, and Kurds. Their men of science were Syrians, Persians, and Egyptians. Their greatest Arabic scholars and the founders of Arabic grammar and of the science of the Arabic language were not Arabians. The same holds of many great masters of the interpretation of the Qur'an, of theology, traditions, and jurisprudence. It is really impossible to find a side of the intellectual life in which the Arabs continued to hold their own.

What can we say, then, of the state of these lands and people before the Arabs came? Did this civilization exist then, and was it simply passed on in a new language and with somewhat changed environment? There is nothing to suggest anything of the kind. Some study of science, philosophy, and medicine existed in Persia; some in the Christian monasteries scattered from the Mediterranean to the Persian Gulf; some, too, among the Syrian heathen who had survived, especially at Harran. But that study was all, as it were, cloistered in the cells and laboratories of the learned; it had no free course among the people, and no one will venture to say that a period of culture and awakening was then in progress. Intellectually, these people were really asleep or worse. Only by grasping this can it be understood how the great Arab raid swept over such tracts and met so little real resistance. It is significant, on the other side, to observe for how many centuries the Muslims were baffled by the passes of the Taurus and the supposed decadent forces of Byzantium. There, and there only, did they meet a people which did not exist simply in the past, but which had a living present and future.

Nor, if we look more narrowly at the Qur'an itself, at the influence of the character of Muhammad, and of the essential ideas of Islam, can we find a clue to our problem. There is nothing there to spur to intellectual exertion or to pondering over the problems of life and of nature. Rather the opposite. Natural science and independent thought, curiosity as to the how and why of things, have ever had to fight a long and losing battle with simple Islam and the form of life which it fosters. Not the contemplative life in Christendom nor the stiffly held dogmas of the Roman and Reformation churches have shown a tithe of this dragging and repressing influence. It is not merely that Islam holds an absolute doctrine of predestination. Rather, it is that for it the map of life is fixed, the scheme of existence all arranged and for the best. Man needs only to accept and enjoy what the bounty of Allah has prepared. Nothing is left to seek or to improve. The bounds of this fleeting world and of man's knowledge therein are appointed. And the world, if it is sought over-keenly, reckoned over-highly, becomes a seducing temptress, turning man from the only thing of any importance, the consideration of Allah Himself. Man's chief end is to glorify and enjoy Allah forever; but he must not in doing that consider too closely or curiously the works

of Allah in creation and providence. He may look at nature, but not so narrowly as to distract him for a moment from nature's God. Free examination and speculation without the ever-present recognition of a tremendous, overshadowing Personality is denied. The world is a perpetual miracle, carried out from instant to instant by this Being. Nature in the sense of law does not exist. At best there is a certain uniformity or custom on which man may fairly depend. But, first and last, it is for him to take humbly what comes to him from day to day at the hand of Allah and to keep his thoughts fixed upon Allah and upon nothing else. From Him he has come, and to Him he must return when the world, like a many-colored bubble, has broken and vanished forever.

Such conceptions as these could never stir to intellectual life, or create a great period of civilization. Yet the period was there and with it our problem, a problem, to my mind, as yet unsolved. Soluble of course it is, but I can put before you no solution now. My object is rather to urge the fact of this problem, a fact very generally obscured or denied. Let me put the problem in a word. We have the Muslim civilization to explain. None of the elements in it — the Arab race, the conquered peoples, Islam — seem to be adequate to an explanation. It may be that we are pressing too closely on the mystery of the ebbing and flowing of the nations and their lives, or endeavoring to estimate conditions which, once gone, can never be re-created or re-understood. But so long as the European renaissance can be weighed or conditioned, it would seem that this great Asiatic renaissance should be possible of intelligible statement.

Let us turn now to the second element. Why had the Muslim civilization no permanence? Here, again, it is necessary to distinguish. Islam and what I have called the Muslim civilization are two very separate things. They can endure apart from one another, I may hazard the assertion, more easily, and are more thinkable as separate entities than Christianity and the Christian civilization. Christianity, some will tell us, is passing in its historical sense, while the Christian civilization is most enduring. However that may be, the essential concepts of Christianity are so absolutely part of the Christian civilization, that to run a line between the two that will follow any bearings but those of a confessionalist, is manifestly impossible. In Islam it was never so. The Muslim civilization may be said to have flourished in spite of Islam. The great thinkers in Islam, apart from some professed theologians, drew no stimulus or guidance from it; often they were hopelessly at odds with it. In the case of the more original theologians even, it would be possible to knock away the Muhammadan scaffolding and let the religious edifice which they had reared stand by itself. Their necessary conceptions are purely general, compounded of mysticism and theism. The peculiarities of Islam, the

bizarre concretenesses sprung from the brain of Muhammad and his immediate constructive followers, drop easily away from them. Yet, in contrast with the asserted experience of Christendom, it is Islam which has survived and not the Muslim civilizations. The worship of the black stone in the Ka'ba, a fetish of the simplest type, has triumphed over the exalted aspirations and visions of the thinker and the mystic.

Islam, then, understood in this sense of the dogma, ritual, institutions and laws established by Muhammad and developed by his successors, is one of the most absolutely permanent things in the world. In spite of its lack of elasticity, its grasp once taken has never been broken nor relaxed. Peoples which had accepted Christianity have again thrown it off; but no people has yet turned from Islam to another faith. The soil, even, with one great exception, which has once become Muslim, remains so to this day, in religion at least, if not in government. That exception was the Spanish Peninsula and the islands which went with it, an exception so exceptional in every way as to stand by itself. Islam, then, is permanent.

But the Muslim civilization is impermanent to a singular degree and in a singular way. The civilizations have always had their tides, their ebbs and flows. Europe has had its dark age, and again its renaissance. But taking the European civilization in the broadest sense, following it for centuries from the brilliant period of Greek thought and letters to the present equally brilliant development of material things, the trend has been a gaining one, the steps and hearts have been upwards, and if there have come periods of silence and rest, the silence has been a brooding and the rest has been a recovery of strength. Far otherwise in Islam. There the silences have ever grown longer and deeper; the periods of life and speech have grown fewer and shorter. The bearers of the torch have kept dwindling in numbers and certainly shrinking more and more from public view. Their periods cease to belong to, cease to be identifiable with, the Muslim peoples; the leaders die in obscurity and fear and leave no followers; the abortive great age is over and the old, abiding Islam reigns on.

Hardly anything can be more melancholy than to trace through Muslim history this unviolated law. The thread there of intellectual life — leaving out of account, of course, the sciences professional and ancillary to Islam itself — may be said to have run threefold. This analysis is rough, and depends, in part, on our ignorance, but will be found suggestive and fairly faithful. Outside of it may be placed the great intellectual movement in the first years of the Abbasids. That seems, in truth, to have been a movement of the whole people; such a one, in fact, as the Elizabethan period in England or the renaissance in Italy. But after this century or less had passed, the intellectual life

continued for a time in three different ways. First there appeared, from time to time, a culture consisting of a circle of men of science and letters gathered round a patronizing monarch at his court. Such a one was Sayf ad-Dawla at Aleppo; such Mahmud the Iconoclast at Ghazna; such many of the Fatimid princes at Cairo; many small dynasties in Spain, and perhaps the last of any meaning, were found in the Muwahhid dynasty in Spain and North Africa. In all these cases, the essential thing was a protector and fosterer strong enough to be able to neglect popular disapproval. This is culture on a court footing, imitating in a fashion the first great Abbasid encouragement of science, but existing essentially for the amusement, edification, and praise of the protecting prince. It did not spring from the people, and from it no popular life could spring. Its existence was strictly dependent on the existence of a prince with enlightened tastes. And even such princes gradually found it advisable to draw a cordon round the speculations of their court philosophers, and to fence off freedom of thought from the mass of the people. On one side, they feared the effects of that thought on the simple faith of the multitude, and on another, they feared the wrath of the multitude against themselves and the freethinkers of their courts. Naturally, under such conditions, genuine freedom of thought ceased to exist. Literature might flourish after a fashion and for a time, but even it could not, in the long run, reach beyond the constructing of panegyrics and jests. Such circles stood to true Augustan ages as the imitations of Versailles by petty German princes to the actual court of the Grand Monarque. As exponents of civilization, they, in their final development, may safely be neglected. Yet it is always to be remembered that al-Farabi, Avicenna, and Averroes, three of the greatest names in Arabic philosophy, were products of such conditions.

This, which I have just described, was the public, visible thread of the intellectual life in Islam. It had no contact with the body of the people; it was of its nature to be abrupt and non-continuous, a succession of dwindling points and not a line. But there must have existed also a second and more continuous thread of tradition, consisting of private and solitary students and thinkers. Their lives, of necessity, were passed in quietness, apart from the throng, seeking safety from it and failing to affect it. We therefore know little of them in detail. Some stand out, as al-Ma'arri, the satirist, in one way, or as Umar Khayyam in another, or, as Nasir ibn Khusraw, who finally sought peace in ascetic mysticism, in yet a third. Almost all we can say is that there was undoubtedly — perhaps still is, to some slight extent — a small number of exceptional men who lived apart and pursued philosophy and science along paths which led them often to mysticism and alchemy. Some had genius, as the three whom I have just mentioned, and their names have come down to us. Some we

know only by vague references, or notes on MSS. Many must have gone their way dumb. They were all carriers of a hidden torch, and in themselves could have formed no civilization. That they had to live thus retired and practically to no other purpose than to pass on their speculations to a rare handful of disciples is the significant thing in them for us.

Thirdly, there was a thread of development still more mysterious to us, because obscured of intention. Just as these solitary thinkers may sometimes have appeared at court, so sometimes they may have had part in that vast philosophical society which, as has been guessed and as I have stated already, lay behind and was one of the weapons of the Fatimid conspiracy. Such bodies were the clearing-houses, the means of exchange and intercourse for the society of their time. On one side they touched the superstitions of the masses, on another the ambitions of would-be founders of empire; on a third all the existing phases of the intellectual life. Of necessity and on all sides they must work underground, and they exploited to the uttermost the doctrine of economy in teaching which all Islam accepts, and which has crystallized in the tradition ascribed to Ali, "Speak to the people as they can understand." Even when the conspiracy had, on the surface, succeeded and the Fatimid dynasty was established, the Hall of Science which they opened at Cairo had to be managed with great care to avoid an open issue with the believing people. Their culture, just as in the case of the courts and the solitary thinkers, was no true civilization, for it did not reach the masses.

We can now state and appreciate more exactly our second problem. In the first century of the Abbasid rule, there came a true intellectual period. It was an outburst, comparable in intensity for the time with the European renaissance. Thereafter came a gradual but persistent decline, varied only by such phases of scientific and philosophical activity as I have already indicated. Above all, the masses of the people had no part in any true culture, seem to have been crippled in some mysterious way for independent thought. Our problem, then, is how this should have been so. The causes usually assigned do not seem to be real or, at least, adequate. Islam itself may have been to blame, but a new analysis of Islam will be necessary to show how it produced such results. Certainly, its fatalism alone is not a sufficient cause. The immediate ancestors of most of us were equally strong predestinarians, but civilization did not suffer greatly at their hands. Nor, to go farther back, was the general position in Europe before the renaissance essentially different from that in the contemporary Islam. Only the renaissance came to Europe and turned it sharply into a new path, and medievalism for it was past, while Islam still lived as in medievalism. That the Muslim countries are yet in the precise condition and hold the precise attitudes of Europe in the

Middle Ages, is the kernel of the situation. Nor can the devastation spread by the Mongol hordes be alleged as an adequate explanation. Their ravages did not spread far enough; Egypt and North Africa, for example, escaped, and our question affects all Muslim lands. Wherever Islam has penetrated and a Muslim government been established, we find this inevitable decadence, punctuated by brief and successively smaller flowerings of a peculiar hothouse culture, exceedingly narrowed in its scope. And curiously enough, such periods are always a sign of weakening in the fabric of the state itself. The more critical Muslims themselves learned to observe them and knew that the state in which they appeared was nearing its close; that some more barbaric and virile successor was about to arise and overthrow it. These points — the disintegrating and weakening effect of culture, and the law that Muslim states change and pass while Islam itself is unchanging and permanent — are to be read, for example, very clearly in the history of Muslim Spain. They made the reconquest possible, and explain the puzzle that Spanish Islam, more highly civilized certainly than Spanish Christendom, and with the millions of Africa at its back, was in the end driven out. But that brings us no nearer to the solution of the primary problems which I have stated, and which are essentially and taken together the question of the general relation of Islam to civilization. Practically, they come out in another question, Is Islam capable of a permanent and normally developing civilization?

It is not my business here to offer answers to these questions. Mine is the easier but less satisfactory part of stating the problems. But from what has gone before, it will be seen in what direction I feel, though very vaguely, that the solutions may lie. The absolute grasp of Islam on all the sides of the lives of the Muslims has something to do with it. When theology, philosophy, science, law — the church and the state in all their phases of activity — are allowed to develop separately, much else will be possible. Again, when Islam abandons — which apparently it never can — its essentially miraculous view of the constitution of the universe, and makes some provision for a reign of law, Islam will be capable of continuous thought and development. Thirdly, and to my mind, most certainly and emphatically, the learned must abandon their scholastically snobbish attitude toward the unlearned masses. Knowledge, and with it civilization, must be made a thing not of the few but of the many. The village school must be fostered even more than the university; Islam has always known the latter; its weakness has been in the former. Scholars must leave their learned ease and isolation and serenity of thought and take the people into their confidence. The economy of teaching must go, and the common-school master must cease to be the butt of all the village jests. When this is accomplished, if accom-

plished it can be, there will be some hope of a permanent civilization in Islam.

We are now left with our third and last question. In what ways and to what extent did the Muslim civilization affect that of Europe? The stating of it is almost enough. The problem is there, and all that I can do is to lay some stress upon its importance. In this country, most unfortunately, the study of Muhammadanism and of Arabic things generally has been treated as a subordinate department in the study of the Bible. May I refer for illustration to the arrangement of this Congress itself? We have this Section of ours in the History of Religion given to Muhammadanism, and that is practically all the recognition which the whole Muslim world has had, a world in contact for centuries with Christendom and which deeply affected it, a world which, at the present time, is going through a great awakening, and which stands with Christendom and the civilization of China as one of the three great existing and militant civilizations. It is true that there is a Section for Semitic languages, but the names of the leading speakers there show that what is meant is Semitic in relation to the Bible. Nor is there a Section of Semitic literature, though the Arabic alone is one of the richest literatures in the world. This, let me say, is no criticism of the present Congress; the Congress, as is only fitting, reflects faithfully the attitude of students in this country.

I need say nothing of Islam as it is at present. The news of the day brings to us the evidence of its gigantic possibilities. But how stand the facts in the earlier case? For the medieval world, let Chaucer instruct us. His Wife of Bath had been three times at Jerusalem. His Knight had been a soldier of fortune in Muslim lands from the Atlantic to Asia Minor. His Squire tells — unhappily only half tells — a tale from the *Arabian Nights*. He himself puts into English a Latin translation of an Arabic treatise on the Astrolabe. Much in the same way we use translations of German treatises. His mathematical vocabulary is Arabic; the names of half his authorities in medicine are Arabic. The fact stands absolutely firm that in his time the Mediterranean peoples were bound by closer ties of study and intercourse than they have ever been since. *Then* students went to Muslim schools in Spain and southern Italy to hear the specialists in their subjects, and to pursue post-graduate study, as ours go now to Germany. *Now* the learned editors of Chaucer do not understand half of these allusions, and have to wait till a stray Arabist comes round to explain them. What Von Ranke, the great master, wrote long ago in a letter to his brother, that for the historian of Europe the two indispensable languages were Latin and Arabic, has yet to bear fruit.

But, happily, in Europe this extreme ignorance and indifference is

passing. The lamented Dozy first compared, in an historical spirit, medieval European chronicles and charters with Arabic texts. Now there is a growing body of Spanish Arabists who are following in his steps. For them there is the advantage that they are all the time on their own soil, and studying their own history. The time must come when all the historians of medieval Europe will of necessity be Arabists, or at least collaborate with Arabists. And I venture to state the thesis sharply, that the next labor for these historians will be to reinterpret the civilization of Europe in the light of that of Islam. Ignorant depreciation and extravagant worship must yield to patient appreciation, and that can be reached only by the students of Europe and of Islam recognizing their mutual dependence and joining their forces. I hail this Congress, then, with its ample recognition of the correlation of sciences and the necessary contact of kindred fields, as a weighty acceptance of that principle and a long step towards carrying it out.

SECTION C — OLD TESTAMENT

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(*Hall* 4, *September* 22, 10 *a. m.*)

CHAIRMAN: PROFESSOR AUGUSTUS S. CURRIER, McCormick Theological Seminary.
SPEAKERS: PROFESSOR JAMES F. MCCURDY, University College of Toronto.
PROFESSOR KARL BUDDE, University of Marburg.
SECRETARY: PROFESSOR JAMES A. KELSO, Western Theological Seminary, Allegheny, Pa.

OLD TESTAMENT SCIENCE

BY JAMES FREDERICK M'CURDY

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THE designation of this paper permits a fairly wide choice in the mode of treatment. The end which I shall here keep in view is to indicate the place occupied by the Old Testament in the domain of the related sciences. The subject must be dealt with broadly and comprehensively, while the method of treatment should be as practical as possible. We should consider the most important aspects of the Old Testament as it bears upon themes which permanently interest the thinking world. From this point of view it seems well to keep out of sight the methods and even many of the important results of Old Testament research, and to confine ourselves to what is of most significance for modern life. At the same time the field of inquiry must also be limited. A comparison with some aspects of the New Testament will be made incidentally. But it will perhaps be most profitable within our present limits to choose the three outstanding references and deal with the relations of our science to *history*, to *literature*, and to *sociology and morals.*

A preliminary question at once suggests itself, Do we know the Old Testament well enough to justify any reasonable attempt to bring it into relation with modern thought and life? The answer must be, that we do not yet know it thoroughly, but we are constantly getting

to know it better. Old Testament science, dating from its first vitalizing impulses, is just a century and a half old; but it is scarcely a half-century old if we count from the beginnings of constructive criticism. What is now attempted can at best be only a comparative success.

I shall mention at the outset a few conclusions as to the proper classification and general purport of the Old Testament writings:

We may divide the contents of the Old Testament roughly into the narrative or historical literature; the institutional or prescriptive literature; the oratorical or prophetic literature; the lyrical and reflective poetry. As regards the first two divisions it is to be said that the five "books of Moses," which contain most of the prescriptive literature, were not written by Moses. They were written after his epoch and at various times and stages in the history of Israel. Again, the narratives generally, from Genesis to Nehemiah, are not "history" in the strict sense of the word, and the materials for history which they furnish must be used with critical caution. They are a repertory of primitive nature-myths, remoulded in the spirit of Hebrew monotheism; of legends regarding the earliest ancestors of the Hebrew people; of traditions describing the beginnings of Hebrew history, the founding of its political, legal, and ceremonial institutions, and the progress of the tribal settlements in the land of Canaan; of the chronicles of the royal houses; of personal memoirs and genealogical records. All of these narratives, whether mythical, legendary, annalistic, or biographical, have been worked over in the interests of different schools of religious thought and purpose, and are often accompanied by interpretations or comments. Most clearly indicated are what are usually called the prophetic and priestly tendencies. These convenient terms are, however, apt to mislead. They do special injustice to the spiritual prophecy of the Old Testament. The historical writings do not keep pace with the profound and progressive movement which regenerated the religious life of Israel. Their authors were impressed by the prophetic spirit, but they were too conservative, conventional, and nationalistic to be classed among the immediate disciples of the prophets.

The prophetic and poetic literature has also been appreciated by modern criticism. The most obvious results of the reconstruction are:

(1) Prophecy is not necessarily or essentially prediction. Prophetic inspiration is not a gift of foresight, but of moral insight. This has been made clear by our understanding of the word and work of the prophets in relation to the history of Israel and the nations, and to the social and religious conditions of their time. We have learned especially how the prophets became a channel of living truth to the world

when they proclaimed that true religion is moral, not ceremonial; that the divine holiness or sanctity has a moral basis; that human responsibility is individual, not merely tribal or national; that God cares for all nations alike; and that moral obligation extends beyond national to international relations. In a word, the prophets laid the foundations of the religion of humanity. This demonstration is the crowning glory of modern criticism, and is of itself sufficient to vindicate its methods and claims.

(2) Of almost equal importance is the reconstruction of the lyrical and reflective poetry of the Old Testament. The Psalms of David are now known not to have been written by David, and the Proverbs of Solomon not to have been composed or compiled by Solomon. These are in themselves secondary matters. What is of most significance is that Hebrew psalmody and the Wisdom literature are, as a whole, complements and successors, not to the Law, but to Prophecy.

(3) What is dominant and vital in Hebrew literature is its imaginative element, the poetry and not the prose of the Old Testament. With this idealistic literature or poetry must be reckoned the greater portion of the prophetic writings.

(4) Another epoch-making fact has been established by recent criticism, — the essential duality of the Old Testament. Such unity as the Old Testament has is superficial, so to say accidental. It is a unit as the literature of a single people, as written in what is practically the same language throughout, as being predominantly religious, as nominally though not always actually illustrating the worship and attributes of the same God. It is not a unit in what is more cardinal and vital, in its conceptions of God and of duty, in its attitude toward life and conduct. There was an epoch in the history of the Old Testament literature when its whole character was changed, and, what is of special significance for the question of the relations of the Old Testament, this era was also a turning-point in the moral and religious education of the race. It was the era of non-professional prophecy, the spiritual birth-time of humanity.

We may now consider directly the relations of Old Testament science to other subjects of human interest. To what other branches of knowledge is it chiefly indebted? It has drawn very largely from several of them. In analyzing the contents of the Old Testament literature historically and genetically, and in determining the relations of its several divisions to one another, Old Testament scholars have gained facts and suggestions from philology, archæology, ethnology, literary criticism, and the modern evolutionary philosophy. What then does our science, stimulated and enriched from the regions lying beyond its borders, give back to the world of thought? According to the rubric laid down at the beginning, we shall have to consider the

relations of our subject to history, to literature, and to sociology and morals.

Relations to History

These may be estimated by examining the various forms of activity by which the people of Israel impressed themselves upon the world, and by indicating their importance to mankind. For the Old Testament history is in a broad and very real sense the history of Israel. All that we have learned or are likely to learn from outside sources as to the doings and character of the Hebrews can do little more than illustrate the national history embodied in their own literary records. What, then, we ask, has general history to gain by the tribute which it draws from Old Testament science, that is, from the knowledge which the Old Testament gives to the world of the life and work of the people of Israel? What were the forms and modes of their activity? What was the character of their government and legal institutions; of their trade and commerce; of their industrial and idealizing arts; of their mental philosophy, their moral and religious principles and beliefs? What also were their achievements in war and in statesmanship?

Turning to the Old Testament for the answers to these questions, we see at once that, for comparative purposes, some of the most important of these factors in national influence must be wholly ignored. The Hebrews made no name for themselves in the useful or in the æsthetic arts. They had no speculative philosophy either of the material or the supersensuous world, while their trade and commerce are negligible in any general survey of ancient civilization.

Nor is the political history of Israel now regarded as of importance to the world at large. It is shown to have been a mere episode in the larger history of Western Asia, in which it was never of any moment as an active factor. In the light of our reconstructed history of the ancient East, Israel is seen to have been a small composite people inhabiting the highlands of Palestine at a comparatively late period, in succession to a long occupation by Amorites or Canaanites, Babylonians and Egyptians, inheriting the civilization of the Canaanites directly, and tinctured indirectly by that of the Babylonians; attaining to a sort of solidarity by tribal federation; then following the example of all Oriental states by adopting monarchical government, and, after a more or less precarious autonomy, going the way of all the kindred coast-land peoples, in complete subjection to the Assyrians and Babylonians. There is nothing striking or exceptional even in its period of independence, at least to the mere chronicler of momentous political events. Yet to the student of national and social life there are points of much interest. One is the cohesiveness, unique among

the Semites, of the clans and tribes of Israel, whereby without resorting to kingly headship they became a confederation with a national outlook and spirit. Another is the brotherliness of the two kingdoms after the schism that followed the death of Solomon, by virtue of which their reëstablished friendship was scarcely broken for a century and a half. These things suggest that the history of Israel best repays study from a point of view different from that of the historian of spectacular or epoch-making external events.

Old Testament science, then, serves political history mainly as it contributes to an accurate estimate of the place and function of a small portion of the Semitic family, and thereby throwing a little light upon the struggle for existence of the peoples of Western Asia. From this point of view the history of Israel has received more illustration from the history of kindred peoples than it has itself contributed, and must be reckoned a beneficiary rather than a benefactor. To have established here the true relation of things is, however, no mean achievement of our science, which has sifted the chaff from the wheat in the traditions of the national heroes, and has reduced to its correct proportions the age-long estimate of the prowess and dignity of the kings of Israel. We may now see how insignificant was the place occupied by the Hebrew people in the wars and politics of the ancient world. The most significant thing in its career was its inextinguishable vitality, and that was due not to the performances of its rulers and warriors, but to the thoughts and aspirations of its prophets and poets, who breathed into the soul of the true Israel the breath of their own inspiration. Thus the saying of "one of them" was fulfilled, — "Not by might nor by power, but by my Spirit, saith Yahwè."

The institutional history of ancient Israel has also been set in a new light by modern research. This has been done in two principal ways:

(1) The legal and prescriptive writings are now seen not to have preceded and inspired the prophetic and reflective literature, which is in the main independent of them. It had formerly been thought that the germs of the sentiments of Prophecy and the Psalms were contained in the Law. Hence its importance in the traditional theory of the composition and growth of the Old Testament. Now it is seen to have been largely theoretical, and some of the most imposing prescriptions were never brought into practical effect. Moreover, men now feel that what is essentially formal or preceptive cannot be the antecedent condition of growth and evolution in the world of the spirit. But the Law, as far as it is either ceremonial or regulative, has a value to the student of institutional history as having been the great conservative force in the late pre-Christian centuries, and as furnishing one of the keys to the external history of modern Judaism.

On the other hand, the more ethical portions of the Pentateuch, including the Decalogue, being due to prophetic influence, are to be regarded as illustrative of the practical effect produced by the great spiritual revolution, which did not receive literary expression till the eighth century before our era.

(2) The more strictly juridical portions of the Law have also been set in new relations. Though they have played no part directly in moulding the modern legislation of Europe and America, outside of ecclesiastical and civil laws relating to marriage and divorce, yet they have always exercised a strong moral and sentimental influence by reason, in large part, of the persuasion that they were of directly divine origin. Recent inquiry into the customs of older Semitic peoples has largely dispelled the belief that they were exclusively framed within the bounds of Israel. The strongest testimony to the indebtedness of the Pentateuchal codes to earlier outside legislation is furnished by the code of Hammurabi. This document of course did not contribute directly any of the biblical material. It simply affords overwhelming proof that while Israel shared in the general consuetudinary law of the primitive western Semites, its special legislation was indirectly influenced by legal digests published at various times, long before the days of Moses, in Babylonia, the home of the higher Semitic civilization.

It is thus admitted that both the incidents of Israel's career and its national institutions are of but secondary practical moment. But it must be granted just as freely that this limitation is no gauge at all of the significance of Old Testament history in the life and thought of men. This apparent paradox suggests a parenthetical remark as to the point of view from which Old Testament history may best be treated. If the historian, deferring to the maxims of the school of Ranke, were to attempt to give an account of Israel from the standpoint of objective fact alone, and of every circumstance of its process and development "*nur zu sagen wie es eigentlich gewesen ist,*" his occupation would be virtually gone. If we are to exclude the sentimental and the subjective entirely in our constructions of Old Testament history, and abjure the prerogative of moral judgment, we may as well give up our essays altogether, and the fragmentary and partial yet humanly and divinely priceless records of Hebrew history may be at once handed over to the dogmatist and the exhorter. To be an interpreter is, in this province at least, to be a censor. This is our way, often our only way, of prophesying. Lord Acton has said, "Our historical judgments have as much to do with hopes of heaven as public or private conduct." And yesterday we were reminded by Professor Mahaffy that in historical science, if we seek first the kingdom of God and his righteousness, all other things will be added unto us.

Relations of the Old Testament to Literature

The most important literary phenomenon of the Old Testament is the fact that Hebrew literature began and ended with poetry, and that its most precious burden of thought and feeling was conveyed to the world through poetic channels. The Hebrews were not merely exceptionally endowed poetically, but poetry was to them the natural and spontaneous expression of all deep and earnest feeling. And it was in artistic forms, however simple, that the individual poet gave voice to his own convictions, and bodied forth his own ideals in the one undivided sphere of religion, patriotism, and practical life, or gave voice to the inarticulate impulses and desires of his community or his nation. Thus the poetry of the Old Testament is, as far as it goes, an accurate register of the moral and intellectual history of the Hebrew people, of its progress from primitive rudeness in thought and speech to ideal sublimity and beauty; from the rugged simplicity of the "Song of the Well" to the artistic symmetry and rhetorical splendor of the "Ode" on the fallen Babylonian, or the sustained reflectiveness of the Book of Job; from the barbaric vengefulness of the Song of Lamech or the Song of Deborah to the chivalric altruism of the allegory of Jonah.

To bridge over the transition from the previous topic to the present, it may be pointed out that as far as the relations of the literature of the Hebrews to their own history is concerned, the literature is in a very real and profound sense itself the history. With the ancient Hebrews, even more than with the Ionian Hellenes, the word was the deed and the idea the fact. The known events of the career of Israel are a mere mutilated and disjointed skeleton. But the body, the flesh and the blood, of a human history are provided by the ideas and sentiments of the moral and religious leaders of the race, and it is to the literature that we must resort if we are to be true historians or interpreters of Israel.

But our chief present interest is with the literature viewed comparatively. According to what has been said, we must consider mainly the poetry of the Old Testament. And we have to use this term in the most comprehensive sense. It should be made to embrace, not merely what is demonstrably metrical in form, such as the Psalms, Proverbs, Job, Canticles, and Lamentations, most of the prophetic writings, and the lyrical and elegiac poems scattered through the narrative literature, but also what is less artistically composed and yet just as clearly poetic or idealistic in spirit, the emotional as well as the imaginative passages in the traditions and chronicles. What remains, graphic as it often is, and always realistic, is usually prosaic and commonplace. The points of most importance in comparison with other literatures are perhaps the following:

(1) The forms of the verse. In describing these we are justified in using the word "measure," and in regarding parallelism as a secondary characteristic. Parallelism is essentially a subjective phenomenon, finding occasional analogy in all other literatures and thoroughgoing resemblances in several, and is therefore to be dealt with, in the first instance, from the point of view of corporate or folk-psychology. The metre is the surest means of distinguishing poetry from prose, in the structural if not always in the æsthetic, sense of the terms; and regularity of verse-structure may be appealed to in textual emendation with more confidence than many leading critics manifest or allow. As to the measures themselves, thanks to recent investigations (I name only those of Budde and Grimme and the epoch-making constructive work of Sievers), distinct and substantial progress has been made in the acquisition of a working system. With regard to the vexed question of strophical divisions, I can only say that the truth seems to lie between the extremes represented by the opposing views of Duhm and Budde. A strophical structure is actually marked in some cases, and obvious in many others; but as we have to deal with blank verse and not the more regularly disposed rhyming lines, inconsistencies in the groupings of the verses in the same composition are not surprising anywhere. A special interest is lent to the study of Hebrew poetry by the fact that in its iambic and anapestic measures it bears a generic resemblance to some of the more common and popular forms of modern versification.

(2) As to species and styles of composition I would remark the poetic form of most of the prophetic discourses, which accords so well with the general idealistic character of the Hebrew literature already referred to. Among ancient peoples the earliest seers were usually singers or poets; but it was characteristic of the Hebrew seers that even when their messages became political and national they should still be given forth in verse. Noteworthy also is the attempt to give a sort of dramatic setting to religious and moral reflection, as in the Book of Job, and to idyllic love-songs, as in the Canticles. Such essays were, from our point of view, uncertain and unsuccessful, but coming from a people so subjective in all literary art, and with no knowledge or conception of a real drama, they must be judged by a standard of their own and without reference to anything non-Semitic. They are really allegorical rather than dramatic, and the interest centres not in their obscure and rudimentary plot, but in the force and beauty of single passages. From this point of view their place in the world's literature is better understood. As a compensation for the absence of a real drama, the lyric and didactic poetry of the Old Testament is in its kind quite unexcelled. Moreover, the whole literature is in a sense dramatic, in

the vividness and naturalness of every picture of life and manners, in the constant use of concrete facts and images as the vehicle of instruction, in the absence of abstractions in all appeals and arguments, in discussions even of matters metaphysical, and in the profoundest reflections upon the nature of God or man. The Old Testament is a type by itself in the literature of the world, and forms a special training-school for the imagination and the critical judgment. Having obtained among non-Semitic Western nations a wider currency than any literature of their own, it has become among all civilized peoples a fountain of the purest literary inspiration, promoting simplicity and naturalness in speaking and writing and a love of the real and the concrete in practical thinking. At the same time, having survived nearly all of the writings that have misinterpreted it, and having outworn and displaced the creeds which misrepresented it, it is becoming more and more the world's chief religious classic and hand-book of practical morals, while retaining unimpaired its character as literature, as a mirror and criticism of human life.

(3) Expression of the religious life. It is the singularly uniform tendency of the Old Testament to regard things from the religious point of view, no matter which of the various aspects of human life may be dealt with. This prevailing religious character formerly excited little surprise, since the whole literature was regarded as a direct divine revelation. An explanation might be given that the religion of the ancient Hebrews embraced the whole of their life in all its motives and activities. Properly understood this explanation is just. The real state of the case would, however, be better set forth by two considerations. In the first place, religion and morality (the more primitive as well as the prophetic morality) and common life were to the old Hebrews one and the same in their nature, and therefore one and the same in their expression. The fundamental fact is that they recognized no duality in human nature; they believed that the whole man in all his functions and faculties, such as we term body, soul and spirit, mind and heart, went together both in the offices of religion and in the habits and activities of daily life. Hence to them a separation between belief and conduct, between piety and duty, between religion and morals, would have been unthinkable even if the modern analysis and phraseology could have been made intelligible to them. Again, that they judged human life and action mainly from the point of view of religion, and not with reference to any other tendency or impulse of our race, is due to the fact that the divine was ever in their thoughts, for their God was their Father, whose fatherhood was sure even if Abraham were to disown them and Israel were not to acknowledge them, who was the constant sustainer of their individual being and of their

social and civil life, who established and guaranteed the unity, the solidarity, and the perpetuity of their nation and of every clan and every family within it, whose own life and activity pervaded and enveloped them, who beset them behind and before and laid his hand upon them.

(4) The influence of the Hebrew poetical literature — so great both intensively and extensively — how is it to be accounted for? Following merely one line of direction, we naturally compare the New Testament Apocalypse. It is also largely a Jewish book surcharged with old-world conceptions, images, and phrases, such as those which stimulated the thought and imagination of the Old Testament seers and poets; and it also strikingly illustrates the power of poetry to raise men above the evil present and to maintain in the darkest hour the supremacy of faith and trust in the divine and the ideal. Outside of this narrow analogy of the New Testament poetry, there is nothing that can be brought into comparison with the poetry of the Hebrews. Contrast, if you will, the quality of the Psalms, as a whole, with that of modern or even medieval Christian hymns, which often please and sometimes move, but rarely thrill us, and with the lack of the simple universal human touch in other religious liturgies, which are almost powerless outside of their own circles of worshipers! I venture to suggest the following as among the causes of the influence of the national poetry of Israel:

(*a*) Hebrew poetry was national as well as individual, and therefore wielded a power at once concentrated and diffusive. When it ceased to be national, it not only languished as an artistic product, but lost its distinctive moral force. It may be observed that the poetry of the ancient Greeks, who, along with many contrasts, yet show more analogies with the Hebrews than do any other non-Semitic peoples, lost its moral effectiveness also when it ceased to be national, as it had been in the old creative epoch when, in the words of Professor Jebb, "poetry was interwoven with the whole texture of Greek life."

(*b*) We may go yet further and add another element to the causes of the moral supremacy of the Hebrew poetry. We must compare not merely one species of literature with another, but also modern with ancient literature. Old Testament poetry was informed with a dynamic energy such as modern poetry seldom wields because the poet thought and felt and sang as making up, along with his people and his God, one single indivisible force. Against many of the gains of our modern life we have to set off the irreparable loss of this old-world association of the human individually and socially with the divine. The resultant of the working of the forces, mental, moral, and emotional, released by the pressure of this conception upon devout and loyal souls, may almost be expressed in terms descriptive

of physical energy, so plainly are their action and interaction displayed, for example, in the pleadings of Hosea, the invocations of the ninetieth Psalm, or the patriotic visions and declamations of the Second Isaiah. From a general point of view a distant parallel may be found in the national songs of modern Japan. There is no literary product of recent time like these for intensified energy or power of popular inspiration; for the Japanese alone, among great modern peoples, have combined in one overpowering patriotic sentiment the conceptions and passions of the old world and the new.

(*c*) This inherent force and freshness of the Hebrew national poetry were still further augmented when the prophets expressed the sentiments and passions of a community within the community, of an Israel within Israel, of a party of long-tried and faithful souls, contending for the principles which were at once the salvation of the state and a revelation of the nature and will of the God of Israel and of the universe.

(5) We may notice finally the bearings of Hebrew literature upon the question of the causes of the production and decline of poetry and imaginative composition generally. It seems to be an invariable law that poetic fervor and creativeness belong to the earlier national life of every literary people and not to the period of its maturity. It is not that in their later time the cultured peoples of the world lose the inspiration of religious faith or of national freedom or of international conflict; for no one of these conditions explains the decline of imaginative genius among the Anglo-Keltic or the Romanic or the Germanic nations. There comes a time in the history of every highly endowed people, even the most romantic and enthusiastic, when literature ceases to be spontaneous and creative, and becomes reflective, critical, and, so to speak, professional, while at the same time accelerated progress is shown in other intellectual fields, in all liberal arts, in industry, commerce, and political and social life. But poetry or idealistic literature flourished all through the history of Israel. Instead of declining with the loss of national independence and political freedom, it became finer and nobler. The best poetry did not precede the best prose, as in the history of other great literatures, but followed it. For a thousand years a genius for poetry and song wrought in Israel irrepressibly, as though endowed with the freshness and vigor of perpetual youth. This also is unique. Professor Macdonald pointed out to us yesterday that the old songs of the pre-Islamic Arabs are still chanted in the interior of the great peninsula, essentially unchanged in form and spirit. But these Arabs of the desert had not to submit to the unnerving and vulgarizing process of constant national attrition and degradation. They were like the people of whom an anonymous prophet has said that like wine settled in the lees it had not

been poured from vessel to vessel nor had gone into captivity, and therefore its flavor had remained in it, and its scent had not changed. Yet the literary history of these secluded Arabs is in its way unique. Is it not to be explained in part by the reserve power inherent in this race, the survivors of the oldest and purest of the Semitic peoples? The Hebrews had also a reserve power drawn from their own peculiar antecedent history and from the religion of Yahwè.

Relations of the Old Testament to Sociology and Morals

Here we come into a more practical sphere. The question arises at once, Can the Old Testament be brought into relation with modern life? Can the complicated social and ethical problems of our time be solved or simplified by the help of any doctrine or principle or conception peculiar to the Old Testament? Apparently it is usually thought to be impossible. The Old Testament is very little cited or appealed to in sociological discussions. The most notorious and indeed almost the only instance is the case of the deceased wife's sister. The Old Testament is supposed to have been antiquated and replaced by the New in all matters of practical moment. Apart from its acknowledged merits as literature and chronicle, and its more or less formal use as a manual of devotion, it is regarded as a subject of historical interest, as an expression of antique ways of thinking and feeling. Histories of morals scarcely ever refer to it except in the way of implied disparagement by contrasting its temporary teachings with the perpetual validity of the New Testament. Histories of religion, apart from special treatises, view it as the embodiment of a transient phase of Semitic thought and belief, or else dispose of it summarily by pointing out that the Judaism of which it is the exponent has been supplanted by Christianity. Even such a critic as Robertson Smith asserts that it would be absurd to expect to find in the Old Testament truth that is not in the New.

Possibly the value of the Old Testament as an authority in sociology and practical morals has been impaired through this wholesale depreciation. Though the general question of its value as a guide in matters of principle and conduct cannot be argued here, the special case at issue may be disposed of by simply comparing the distinctive social virtues of the Old Testament with those of the New. On the one side we have, according to the classical passage Micah 6:8, especially justice or righteousness and mercy or kindness. On the other we have especially the finer virtues, — forgiveness, forbearance, tolerance, charity. These latter are also the choice accomplishments of modern society. What does modern society stand most in need of? Justice and mercy. This is the clamorous demand coming from every con-

crete form of human society: associations of trade, industry, and government; all sorts of employments, legislation, civic administration, diplomacy, international relations. It was once thought that it was harder to acquire the finer graces of the New Testament than the more elementary virtues of the Old. This is doubtful. At all events, it is easier to feign the possession of the former than of the latter, and an occasional indulgence in works or words of charity will throw a successful disguise over a cold and deceitful heart or a selfish and unwholesome life. Justice and mercy are really the rarest of virtues, and they are sociologically the most precious. They have also the wider range. Their proper application outside the sphere of individual relations is the slowest of all social reforms. In the realm of corporate interests it is still timid and unsure; in that of international relations it has little more than just begun.

Here the Old Testament is distinct from the New. Here the Old Testament is not rudimentary or provisional or preparatory. If it is of value it is independently valuable. Is it of value? If anything historical or literary is of value for moral purposes, the sociological principles of the Old Testament are valuable. They were the cardinal principles of a community that struggled for centuries to enforce them. They came to flower and fruit in the precepts and examples of the prophets, and are celebrated in the sweetest lyrics of the prophetic school of poetry. There is no other practical illustration or justification of justice, righteousness, and mercy such as is given in the Old Testament.

The prophets introduced to the world these terms and these ideas. They created practically a new vocabulary, and set up a new moral and social code. And the outcome of justice and mercy is peace — not the peace of truce or compromise, of subjugation and submission, of devastated lands and desolate homes and ruined lives, but peace wrought by righteousness. "The mountains shall bring forth peace, and the little hills, by righteousness," is a forecast of the rule of the "Prince of Peace." And a New Testament book with an Old Testament coloring reëchoes the thought when it describes the coming Saviour, "being first king of righteousness and afterwards king of Salem, that is King of Peace."

Consider but the single sphere of international relations and obligations. The New Testament simply could not with propriety deal with this most comprehensive and weighty of all sociological matters, because there was no occasion. It was not merely because the principles of social and civil righteousness had been established once for all, but also because no international questions were possible to the people of Judæa in the times of Jesus and the apostles. There was practically but one nation in the whole Jewish world. Contrast with this condition of affairs the political situation of the days of the

prophets, three of whom, Amos, Isaiah, and Jeremiah, make the province of international relations one of cardinal importance, while Habakkuk devotes to it the whole of his prophecy.

What is the Old Testament sanction for the practice and authority of these primary and essential virtues? It is strictly sociological. It is based, on the one hand, upon the solidarity of the community by blood-brotherhood, and, on the other, upon the relation of each member of the community, and of the whole body as one family, to the common God. The new world long ago lost these old-world principles. But they are based upon the original constitution of society, and until they are reinstated society will not be renewed and reformed. And singularly enough, sociological science is beginning to realize the former of the two principles. It is reaching by slow deductions the prophetic conception, when it declares that the individual can realize himself only in society; that the state is an organism for the promotion of this self-realization, fostering in its members the sentiment of patriotism; and that the alliance or federation of the nations is a necessary further medium for the development of this same self-realization of the individual, who never can complete or fulfill himself until he makes himself one with his own community and with the larger community of mankind.

The other sentiment — that of the union of the members of the community with the common God — lies outside the sphere of modern sociology. Why? Because the new-world view has divorced religion wholly from social life, that is to say, from practical morals, by making it solely a matter of the relation of the individual soul to God, instead of its relation to both God and man. The result has been infinitely disastrous. The churches are supposed to look after our religion, but no one dreams of looking after our morals. To the simple philosophy of the Old Testament this dualism of religion and morals, the dividing up of a man into separable elements, and of his life into unrelated functions, was a conception unknown and inconceivable. But Greek analytic speculation, and medieval phrase-mongering, and the habit, so dear to the Occidental mind, of giving concrete reality to our abstractions, have wrought havoc with our common sense and indefinitely postponed the redemption of society. We have banished God from our homes and haunts to his cold and distant heavens, and in the long absence of the Father his earthly household is left desolate. We often hear the admonition, "Back to Jesus!" With equal urgency we may well raise the cry, Back to Jesus and the Prophets!

THE RELATIONS OF OLD TESTAMENT SCIENCE TO THE ALLIED DEPARTMENTS AND TO SCIENCE IN GENERAL

BY KARL FERDINAND REINHARD BUDDE

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Permit me to begin my address with a personal reminiscence. It was just six years ago yesterday that I stepped for the first time upon the soil of the New World. I was invited here by the Committee for the American Lectures on the History of Religions, to deliver a course of lectures upon "The Religion of Israel to the Exile." When I closed the first lecture in that course at one of your oldest and most important universities, a colleague from the department of science came up and greeted me most kindly with the words: "Why, you really use the same methods as we." Now, it is just this to which our opponents object, and with which they reproach us Old Testament students who take a critical standpoint. We have even been branded with the beautiful name "evolutionary theorists." Nevertheless, I was far from being unpleasantly affected by that first greeting. On the contrary, I expressed to the representative of the exact sciences my sincere pleasure that he had felt so directly the affinity between us, and I found in it additional ground for the hope that I was on the right road with my deductions.

To this truth, that all genuine science forms one living body through which the same blood courses, which is animated and nourished by the same forces and by the same means, no such tangible and overpowering expression has ever been given as in this Congress of Arts and Science which here unites us, their representatives from the whole educated world, in the bonds of brotherhood. One of the two addresses in every department is specially intended to show how the several branches of science manifest their particular relation to science as a whole. This is the task confided to me for my special branch. Allow me to interpret the winged word of six years ago as a prophecy of our present meeting, and at the same time as an encouraging sign that I may in fact fulfill the intention of these addresses, and so meet the expectation of the Congress. I may be permitted

to take for granted that you do not expect anything heroic from me. You simply suppose that one who for full thirty years has worked in his department is in a position to present its peculiarities and its aims with approximate accuracy.

The department which I represent, and of which you to-day demand from me an account, is the Old Testament branch of theology, in short, Old Testament theology. Strictly speaking, we are here not concerned with a branch of pure science, which investigates its object simply for its own sake. Therefore I must hesitate to accept the position you have given my Department as a branch of the History of Religion. What we understand by theology is really not the science of religion as such, but the science of the Christian Church. In fact, as matters stand to-day and have stood since time immemorial, it is the science of only one of its forms of development — in my case of the German Evangelical Church — whose interests and needs our theology serves. Theology is, thus, only an applied science, for which fact it must console itself in common with many others — for example, to mention only those most nearly related, in our university programme, with law and with medicine.

Now, to the Old Testament department, in comparison with others, and with the multiplicity of churches within Christianity, there might be conceded a favored, one might say an ecumenical, position, in that it ends at the point where Christianity begins; that is to say, before there were schisms within its own body. Nevertheless, the individual beliefs of members of the department will certainly never entirely lack influence upon the work of the department as a whole. And, in any case, our position toward the religion of the Old Testament, as far as it claims to be a living religion, is very sharply defined. We have no other calling than to explain how the religion of the New Testament, the Christian religion, could — nay, *must* — spring up on the ground of the Old Testament religion; or, religiously expressed, how God through Israel prepared his human children for the coming of salvation in Jesus Christ. This prescribed task has naturally its correlate in individual conviction, and if ever one of us should come to the conclusion that not Christianity, but Judaism, is the fulfillment of the Old Testament, then he must, for his profession as well as for his belief, draw from this its inevitable conclusions.

In thus fully and freely accepting the church's traditional name, Old Testament, — Old (that is, outgrown) Covenant, — for the object of our research, we really exercise a certain amount of self-denial, and resign ourselves to accept a comparatively humble position. Whether this always wins us due gratitude from the Christian Church is anything but sure. Our position and our rôle in the church organism have, indeed, changed essentially in the course of the cen-

turies and the millenniums. When the church came into existence, it accepted the books of the synagogue as the one Holy Scripture, to which it added only the person of Jesus Christ as the incarnate fulfillment and consummation of the Old Covenant. The proof that he was the Saviour rested upon evidences which were believed to stand upon every page of those books. When to the Old Testament there was added in the Gospels and the Epistles a New Testament, which put the person and the teaching of Jesus on an independent basis, and when this biblical teaching was embodied in ecclesiastical dogma, the Old Testament still retained its peculiar value. Inspired of God, it remained for the church, now as before, God's Word, and, as such, each of its words remained true. Nor was it valid for the past alone, to which it had been given; for Christ had built on Old Testament ground, and had let much remain, instead of making substitutions. Moreover, if Christianity was, or included, an authoritative conception of the universe, — which, as the heir of the Greek philosophy, it claimed to do, — then it greatly needed the Old Testament for the completion of its system over long periods, especially for its teaching on the creation and building of the world, on the primeval state of man, and on the origin and nature of sin. Accordingly, the Old Testament continued to remain in honor, in the church of the Reformation not less than before, and down to modern times. Now all this is changed. In the face of searching investigation of the Scriptures, many messianic prophecies had to fall, and the rest received a new, a merely relative, significance. The theory of inspiration, of the absolute and literal divinity, of the language of Holy Scripture has fallen to the ground before historical criticism, and can never rise again. Metaphysics we have put aside, and the investigation of the universe and its development we resign without regret to other sciences, to whose success we give our blessing. The gospel has become for us completely independent, and the person of Jesus Christ the essence of our religion. By all this the Christianity of the nineteenth century grew in concentration and inner strength, and accordingly in legitimate self-consciousness; but in the same degree did the Old Testament retreat into the background and lose value within the theological framework. It was but a natural consequence of this that a party not to be overlooked maintained that the Old Testament was completely and entirely cast aside. Indeed, within the theological faculties themselves doubts now and then arose as to whether the Old Testament should be permitted to retain its position of equality with other departments of the theological course.

We need not fear that such views will prevail. On the eve of the twentieth century there came a revolution for which we living Old Testament men had for some decades been energetically preparing. Even lay circles now hear that theology is being viewed and treated

from the standpoint of the history of religion. The name might, however, be better chosen; it is not a matter of the history of religion, but of the comparative study of religion; and this study tends to and aims at a physiology of religion, or, to use the right word, at a biology of religion.

We have learned to consider everything called religion as forming a distinct department, and an exceptionally large one, of pulsating life within the realm of human existence. All its phenomena enter into the closest mutual relations; none of its almost innumerable manifestations can be separated and isolated from the others. It is a frequent experience that most unexpectedly there appear mysterious relations between apparently the lowest and the very highest forms, which warn us neither to despise nor to neglect even the most insignificant among them. By this Christianity can only win, not lose. Indeed the more we extend the range of observation and the deeper we penetrate into details, the more evident will it become that the reality of religion is incontestable and its vitality indestructible. The more numerous the inner relations running through the whole body, the more certainly will everything be traced back to the one central point, to the living God, who has fanned this spark; and we Christians, notwithstanding all our conscious weaknesses, joyfully accept the test of spirit and power for the fact that Christianity is, among all individual religious organisms, the highest and the most perfect, the aim and the end of the whole process.

Looked at from this point of view, the Old Testament comes quite of itself to new honor. For however all religions are correlated, and all their phenomena organically connected, Jesus Christ, the founder and essence of our religion, was certainly a Jew of the Jews. However unique and creative the power and efficacy of religious genius manifested in him, the preliminary conditions for this appearance are nevertheless furnished by the Old Testament. Just as the genius has his father and mother as well as the most ordinary earthling, so Jesus always and unhesitatingly recognized this his relation to the Old Testament; in fact, he made for himself no greater claim than that he was come for its fulfillment. To destroy this relation would be not merely ruthless, it would also be simply impossible. Therefore the more the Christian and the theologian cares for an organic conception of his religion, the more has the Old Testament to say to him.

The relation of the Old Testament to the New is, however, not such a one — if supposable — as that borne by insignificant parents to their highly gifted son. The Old Testament, on the contrary, is unusually rich in phenomena important for the history of religions. The more clearly research separates the characteristic and important stages of the phenomena of religion from the confusing mass of single

facts, the more evident it will become that the Old Testament contains within itself an unusually large number of important stages which have been passed through successively or simultaneously. It is only with this result attained that the earnest and self-denying critical work done during the past century upon our Old Testament is brought to a close, and at the same time celebrates its triumph. For in agreement with these results all those various manifestations of religious action, feeling, and thought are successively or simultaneously disclosed; so that wherever literary criticism has distinguished different sources from each other, there are also disclosed various stages of religious perception, and each of these stages finds within the broad realm of religion corresponding phases of religious thought, more or less related. Whoever stands in the midst of the matter, and has learned to think and to feel with the Old Testament, will not let himself be led astray. Again and again the attempt has been made to derive the whole of the phenomena found in the Old Testament from one and the same source, from this or that great civilized nation of antiquity. It is true that ancient Israel had about her, on the right and on the left, the religious second-hand shops of over-civilized peoples, from which syncretistic temerity could easily derive whatever it liked. But one who does not merely stand outside and look over the hedge into the Old Testament knows that the religion of Israel, however manifold and however wise its cross-breedings, is, nevertheless, grown from the kernel. We Old Testament students are therefore not at all in the fortunate, or at least comfortable, position of being able to limit our study of comparative religion either to the lands on the Euphrates and the Tigris, or to a small group of civilized countries in Hither Asia; for we have repeatedly learned that the most primitive forms of religion afford striking and exceedingly useful points of comparison for the Old Testament.

Now, these facts have an important bearing upon the position of the Old Testament in the academic programme. Of late the cry sounds ever louder that the department of the history of religion is indispensable to the theological faculty, and that the subject absolutely must be added to those already presented; indeed, this is in many cases already an accomplished fact. I do not know whether this is to be considered an unqualified advantage. The familiar definition of theology as the science of religion I consider wide of the mark. Theology is, as I have already said, not a pure but an applied science, busy with life within sharply defined limits. To penetrate to the depths of the general history of religion, within the time which is allotted to the study of theology, in addition to the enormous range of studies already included, is an absolute impossibility. A short course of lectures on the subject might do harm rather than good, by leading the student to think that he possessed genuine knowledge,

whereas the treatment could hardly be made to include much more than nomenclature and dates. More valuable, but at the same time incomparably more difficult, would be a course upon what is customarily called the philosophy of religion, but which should be termed the biology of religion; upon the regularly recurring manifestations of the life of religion. The preparation for this, the actual illustration — and that is the most important part — has long been everywhere offered by Old Testament science, just because the Old Testament is so exceptionally rich in most varied religious phenomena. Here it is possible to penetrate to the depths, and to study the life itself; something necessarily denied to one in the case of a summarizing treatment of the whole field. Therefore as substitute, as proxy for the general history of religion, as the science of *one* religion outside of Christianity, which gives us the training to enter into the mysteries of our own, Old Testament science will in the future more firmly than in the past maintain its position within Christian theology.

But not alone in the relation of our department to the whole organism of theology has there lately come a decided change; the boundaries of the department itself have also been extended, and the gap which separated it from its sister-discipline, New Testament theology, has been closed. For the church the Old Testament was only the collection of canonical books of the synagogue, because they were alone believed to be inspired of God. Besides these, only the so-called Apocrypha, taken from the LXX, enjoyed an esteem which was variously graduated from a degree nearly equaling that given to the Holy Scriptures down to a decided distrust and rejection. We know to-day that the belief in inspiration is nothing more than an error — to be sure, an easily explainable error — a lifeless form of the belief in revelation which is itself indispensable to religion; and we now know that divine revelation in the right sense, always relative, always through human mediation, and in the most varied shades of intensity, exercises its quickening influence through the whole wide world. With this the barriers fall, and all the phenomena of religion of the people of the Old Covenant, wherever set down, become valuable material for Old Testament theology. This is particularly true of the whole extra-canonical writings, which in recent times have received such manifold and unexpected additions. So far as these belong to pre-Christian Judaism, they fall to the share of the Old Testament department, and thus appreciably enlarge the field of our duties and of our tasks; indeed, they so greatly enlarge it that we must ask ourselves whether we are in a position to meet these increased demands without loss of thoroughness. But even before the question is settled whether the blame for this is to be laid to our incapacity or to our apathy, necessity comes to its own rescue. All this extra-canonical literature belongs to the last pre-

Christian centuries, which are, indeed, not without representation in the Old Testament canon, but only by way of exception and contrary to the opinion and intention of the synagogue. Now, since this body of writings is not only in point of time nearest neighbor to the New Testament, but emphatically its cradle, it has, naturally enough, attracted much more attention from our New Testament colleagues than from ourselves. Under the unattractive name of New Testament contemporary history, it has developed as an independent branch, and a whole school of New Testament students have devoted themselves with zeal and thoroughness to this inter-Testament time and literature. We Old Testament men ought not to lose touch with this field; in fact, it is greatly to be desired that there shall always be some of us who bend our chief energies toward its particular investigation. But its complete incorporation into our department has been prevented by the facts; and, moreover, the study of Israel of the earlier time will long make such demands upon our undivided strength that it will employ by far the greater number of our workers.

In another direction the necessity for division of labor seems even less open to question, but rather fundamentally justified. Only uncertain boundaries naturally separate that body of popular writings, the so-called Apocrypha and Pseudepigrapha, from the literature of talmudic Judaism, in which alone the Hebrew language, together with the Jewish Aramaic, continued to exist and to develop. The roots of this body of writings stretch back into the pre-Christian period, and thus reach as well into the fields of Old Testament science. What is therein handed down to us is absolutely indispensable for the reconstruction and exposition of the canonical books; indeed, the form in which we possess the latter is simply that of the synagogue. The insight into post-Christian development is also of great value for us, because in this connection lines are running on which trace their beginning to pre-Christian Judaism in the Old Testament, so that they must serve as guides to the full recognition of the possibilities contained in the Old Testament. All this does not invalidate the truth that our peculiar task is ended when talmudic Judaism has fully developed and gained the mastery. For us it is not a matter of our own territory, but of frontier lands. Here, too, Old Testament science has worked and has given contributions of the greatest importance, and it always will be to our advantage, as well as to that of the science of Judaism, to send to that camp from ours some workers who will there perform their chief labor. Most of us will have to be content with much less in order really to accomplish something in our own particular field.

But the Old Testament has not spent its life and its influence solely in its original language and among the people from which it sprang, but, as a component part of the sacred book of Christianity,

it has been translated into the language of all Christian peoples, where it has gained a new life deeply influenced by the peculiar nature of such new homes. By means of these translations, most of all through the Latin, the Old Testament has during all succeeding centuries influenced and fructified the development of civilization among all the Christian nations, and this, moreover, not only in the religious field, but throughout its whole extent and compass. The literature and the art of the Middle Ages show at every stage deeply impressed traces of this influence, which become the more intricate and the more complicated because of the venerable antiquity and mysterious heterogeneousness of the Old Testament to those who searched it. So the Old Testament gains a new life, a second existence; its original being is doubled by translation and exegesis, by the whole wide field of tradition. That here, too, obligations rest upon us is not in the least to be denied, for only one who is master of the original meaning will be in a position fully to disclose the maze through which thought and imagination have wandered with these texts. Often I have stood ashamed that I could give no satisfaction to philologists, historians, and students of the history of art who turned in all confidence to me with burning questions from the field of tradition. One needs a particular talent to be able to cultivate this field with success; a taste for miscellaneous peripheral investigation, comprehensive learning based on a tenacious memory, a liking for psychological labyrinths and for turning up forgotten old trash. I have in mind to-day one learned man in particular who possesses this equipment in abundance, and gives many valuable proofs of it; but he should be able to devote to it all his time and have many assistants in order to cover this need. It is not necessary that all should be of us, but all must have gone out from us. Thorough Old Testament study would furnish a worthy equipment for close research in nearly all fields of the Middle Ages. On the other hand, for this task, far from fruitless in itself, the majority of Old Testament specialists must admit their incapacity.

In returning to the central point, whence we followed a longitudinal section through the ages, we find that there lies in the breadth of our territory on all sides such an enormous amount of work to be done that upon it we unquestionably need to concentrate our energies. Of neighbors — no, of co-workers — beyond the borders of theological science we have an unusual number.

The Old Testament worker is, first of all, a linguist; as such he represents an independent branch of the Semitic linguistic stock, the Hebrew, in particular the old Hebrew, language. This is not the place to speak of its relation to other branches of the same family. It need hardly be said, however, that to make a thorough study of these tongues is the duty of the Old Testament worker, in order to

gain a foundation for the real mastery of his peculiar linguistic domain. This task alone is very comprehensive and difficult, and has become increasingly so since to the Arabic and Aramaic linguistic stock, with their ramifications, the magnificent discoveries on the Euphrates and the Tigris have added the Assyro-Babylonian. The majority of us older men, whose period of growth coincided with the beginnings of these new studies, must, in our relation to them, content ourselves with the rôle of outsiders. But even for the younger generation one may be permitted to ask the question whether it is necessary — yes, whether it is salutary — to strive for citizenship in the whole domain, now so expanded, of the Semitic languages. The almost invariable result will be that one of the principal fields will be decidedly favored. In fact, those representatives of the Old Testament who are linguistically well prepared for their task are already separating into those grounded in the Arabic and those grounded in the Assyro-Babylonian language. And thus it must remain, if linguistic preparation is not to flatten out into an encyclopedic polymathy — an unfortunate condition which is already too frequently noticeable. To-day it may not be superfluous to emphasize two points in particular: first, that the Semitic language of the cuneiform inscriptions is not called to supplant the other dialects as a foundation for Hebrew; second, that in the study of the dialects the unique quality of the Hebrew is never to be forgotten or neglected. Because the bulk of the writings is but slight, and the vocabulary and constructions correspondingly meagre, Hebrew is by no means to be acquired incidentally, and as it were in leisure hours. Often enough a miserable failure has resulted when capable Semitists of reputation, knowing themselves thoroughly at home in Arabic, Syriac, or Assyrian, thought that as Hebraists also they could speak a decisive word. It is and always will be a life-work to acquire a living sense of the genius of the Hebrew language, and it will be better, if the choice must be made, after once a solid linguistic foundation has been laid, to neglect the outposts rather than to reject the full mastery of the Hebrew.

Moreover, our linguistic equipment is not completed even with the inclusion of the Semitic languages; the old versions already mentioned as the vehicles of tradition, as the transmitters of the content of the Old Testament to different periods and to different civilized countries, are our indispensable aids to the philological discovery of its original text. To-day an Old Testament worker without a thorough familiarity with the idiom of the Septuagint is inconceivable, and the identification and purification of the text of the Septuagint require a knowledge of nearly all languages of the Roman *orbis terrarum*, at least of its larger eastern portion and of its neighboring countries. Especially since Lagarde's telling work a special

Septuagint science has grown up, and will not for a long time to come lay down its authority.

With this we are standing in the midst of philology, to which in its whole range, as to a sister-science, we also lay claim. Even the authentication of the text, in the case of our literature, meets with very unusual difficulties. For, as is well known, all this work on the versions must be directed solely toward securing a single independent form of text, apart from that which, since the second century A.D., has been handed down by the synagogue in stubborn exclusion, and to the destruction of all variants. Even the best preserved of the books — no one to-day doubts this — still demand a great deal of philological work; the condition of the others is simply lamentable. The amount of help which the versions, especially the Septuagint, offer varies widely. With such meagre outward evidence everywhere, the inner evidence must be drawn out as a decisive factor, and conjectural criticism here opens up a wide field, in which, besides much chaff, also much good fruit has been gathered.

Another branch of philological activity has been employed in textual criticism, and has attained special prominence in recent years. I refer to metrics. Indeed, the Hebrew metric exerts so strong an attraction that even remote distinguished representatives of linguistic departments have applied themselves to it with great enthusiasm and industry. Here, too, as in textual criticism, we are in a worse plight than the majority of our colleagues; for here too we lack the most essential foundation — there is no tradition at all handed down to us. When, in the light of the sad condition of our text, there is an attempt to use metrics in their widest sense for the reconstruction of its original form, then, in the face of this lamentable state of affairs, the *circulus vitiosus* is evident. This method is not to be opposed on principle, for its legitimacy is indisputable, and is, moreover, proved by certain definite results; but we must again urge the greatest caution, since the standard itself by which the correctness of the text is to be measured — I mean the system of metrics — can be gained only through the strongest participation of the critic's own subjectivity. The very foundations of the structure are still in question; let us carefully avoid rearing up hasty air-castles.

Of exegesis almost nothing need be said; its laws are universally the same, as are also the particular demands made upon it by individual periods. In the Old Testament, as well as elsewhere, the historical, psychological, and æsthetic sides of the task are to-day much more strongly emphasized than in the past. But surely it is but just to call particular attention to the mighty service which has been done for the Old Testament in the last one hundred and fifty years by literary criticism. Seldom will such difficult problems be assigned to it, and seldom will such complete, safe, and far-reach-

ing solutions be achieved. The history of this work, especially of the Hexateuch criticism, taken at a bird's-eye view, where individuals, with their weaknesses and their limitations vanish, affords a truly classical example of methodical procedure. Notice the possibilities, the application of fundamentally differing, yes, of antagonistic, critical methods, and the repeated tests for the same results. And throughout all this, Old Testament science worked without precursors; indeed, it offered incentive to all other fields of literature, and served them as prototype. The final and complete victory was won by an attack along the whole line. Abraham Kuenen and Julius Wellhausen were successful by combining the internal criticism of men like Reuss and Vatke with the formal criticism of such as Astruc and Hupfeld. Everything essential now stands so fast that the dilettante attacks from outsiders who come up from the right and from the left give no cause for fear. Nowadays the realistic criticism, essentially founded upon facts of the religious history of Israel, holds the foreground, while the battle chiefly rages about the prophets. Here now and then the same bold sallies of discovery are undertaken as formerly in the investigation of the historical books. It may be questioned whether we shall here ever attain to equally positive results in details; the large outlines we already see with sufficient clearness.

The advance from the abstract analysis of former times, which produced only negative results, to the living synthesis, the insight into the political and religious conditions of every writing, makes it now also possible to produce, instead of the old-fashioned introduction to the Old Testament, a history of Old Testament literature, proceeding in chronological order and showing the organic development of the spirit of Israel. The work which Eduard Reuss planned a half-century ago, and carried out in a genial experiment a quarter-century ago, we, with our better equipment, should not now hesitate to take in hand anew. Such a genuine history of literature would of necessity demand to be incorporated into the whole history of the people, and therewith we ourselves enter the ranks of the historians. In fact, the task rests upon us, and upon no one else, of writing the history of that nation, in itself petty, but for the development of humanity extraordinarily important, of old Israel during the one and a quarter millenniums of its pre-Christian existence. The unusual difficulty of clearing up the sources makes our department as good as inaccessible to a student of ancient history who has not been trained in our school. This was sufficiently evinced in the past generation by such examples as M. Duncker and L. Ranke; and the present, especially the Assyriological, school of historians seems to rival them in proving the same thing. On the one side the attack is made by the exponents of tradition, who apply everything discovered from the monuments to the biblical department in order to prop up the old

ecclesiastical tradition, now become a dogma which they themselves have not outgrown. From the other side the onset is made by the mythologists, who endeavor in one way or another to resolve the plain historical facts into dull, monotonous trains of thought. They will all offer us an occasional contribution; but in the main their work will be vain, because they lack training for the right use of the sources as well as comprehension of the spirit of the Old Testament. Therefore we intend to hold on to our task of writing the history of the people of Israel in its whole extent, and to perform this task increasingly well. In this connection we make grateful use of all that the related sciences of every kind have to offer — geography, ethnology, archæology, and all the rest; indeed, we feel ourselves everywhere as fellow workers, and hope to do our duty to the utmost of our power. We follow with particular interest the prodigious progress in the excavations on the ruined sites of those nations which lived at the same time as Israel, and, in part, long before; the new branches of science which have sprung up from these researches astonish us with their magnificent results. We are often reproached with the opposite attitude, with indifference and apathy, and the consequent stagnation and retrogression in our own work. But our legitimate caution does not deserve such censure. Joyfully as we hail everything which comes forth from the excavations, we still have no desire to fill the yawning trenches with our present possession, with the books of the Old Testament. Such things as are there brought up are at first riddles, sphinx forms; what we have in our hands speaks to us a plain language, incapable of misconception. We gladly accept the correct interpretation of the monuments as a substantial enrichment of our own possessions; but the groundwork for an understanding of the people of Israel we must always derive from what has been handed down by this people. Overwhelmingly great as was the physical and intellectual power of the world-empire on the Euphrates and the Tigris; superior as was the kingdom on the Nile, and many another, in comparison with the petty kingdom of Israel, we still have here, in spite of all influences from the most diverse directions, to do with an independent national individuality, and with one so energetic and so vigorous that it ultimately set up for itself its own laws and its own aims.

This is preëminently true (to return to the kernel of the matter and to the beginning of this survey) of the religion of Israel, in which its life reached its supreme and exhaustive expression. Supported by such presuppositions and preliminaries as are here developed, we can, I dare say, with greater confidence than at the beginning of this survey, associate ourselves and our department with the representatives of the general science of religion; and this in spite of our Christian theological stamp, which we neither can, nor desire to, dis-

claim. We strive, in fact, to understand the remarkable, the unique, appearance of the religion of Israel as such in its historical development; we are determined to overlook no characteristic which is likely to distinguish it, and to make it more possible of comprehension. That this task offers the greatest difficulties does not terrify us; that it brings us into contact with so many branches of science makes us proud. But we need many associates, and they must be of very differing qualities. The compass of the work is so great that it demands division of labor. No one should be accused of one-sidedness if he carefully tends his own particular part of this great field, and really promotes our work. But let no superficial dilettantism find place among us. As we older men slowly withdraw from the scene of action, may the men of the new generation escape the danger of scattering their forces, and strive with success to concentrate on every point, however small, the most thorough possible scholarship!

SECTION D — NEW TESTAMENT

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(*Hall* 1, *September* 23, 10 *a. m.*)

CHAIRMAN: PROFESSOR ANDREW C. ZENOS, McCormick Theological Seminary.
SPEAKERS: PROFESSOR BENJAMIN W. BACON, Yale University.
PROFESSOR ERNEST D. BURTON, University of Chicago.
SECRETARY: PROFESSOR CLYDE W. VOTAW, University of Chicago.

THE Section of the New Testament in the Department of History of Religion was presided over by Professor Andrew C. Zenos of the McCormick Theological Seminary of Chicago, Illinois. In introducing the speakers Professor Zenos said, in part, that this Section might be regarded as the central one of the whole system of the Congress of Arts and Science. The religious is the highest nature of man, and among religions Christianity is conceded the place of preëminence, even from the point of view of the purely scientific student of religion. Christianity emerges in a definite historical setting and under clearly ascertainable conditions. That its origin is buried in a mythical age, that the facts regarding its foundation and first stages are lost beyond recovery, is a theory which was put forth and defended with great acumen by the brilliant Hegelian of the early nineteenth century. But the greater the ability with which it was expounded and urged, the more certain is its untenableness since its complete collapse and abandonment. Nothing stands better established than the absolute historicity of the basal facts of the Christian religion. The field was much larger than it first appeared. First into one part of it, then into another, research has been pushed until, out of the apparently simple and single study of the New Testament as a book of religious instruction, there have arisen one after another the associated sciences of New Testament Philology, New Testament Archæology, New Testament Criticism (Higher and Lower), New Testament History, with its subdivisions of the Life of Christ, the Life of Paul, the Apostolic Age, New Testament Times, and finally to crown the whole group, the Biblical Theology of the New Testament. A great science has truly been born. A living interest, always existing in the first writings of Christian men, has found a legitimate field and a large and diversified expression. New Testament science stands to-day before the world, not as a seeker for consideration upon extra-scientific grounds, but because it offers a great and supremely important field to its votaries, and because its methods are just those which inspire confidence in every science throughout the whole scheme.

But our humanity is one and indivisible, and we cannot stand here as mere scientists forgetting what the New Testament means to us personally, or to the religious community to which we belong. It is the charter of their existence and the source of our inspiration and life. As the artist, who studies the principles of his technique or the chemistry of his colors and thinks he has done justice to his work, has failed as an artist, so the Christian scholar cannot investigate the New Testament as a mere field for historical research and be satisfied that his task is completed. He must be possessed by the spirit of its religion and filled with the sense of its transcendent power.

THE RELATIONS OF NEW TESTAMENT SCIENCE TO KINDRED SCIENCES

BY BENJAMIN WISNER BACON

[**Benjamin Wisner Bacon,** Professor of New Testament Criticism and Exegesis, Yale Divinity School, Yale University. **b.** January 15, 1860, Litchfield, Connecticut. B.A. Yale, 1881; B.D. *ibid.* 1884; M.A. *ibid.* 1892; D.D. Western Reserve University, 1892; Litt.D. Syracuse, 1894; LL.D. Illinois College, 1904. Pastor of First Church (Congregational), Old Lyme, Connecticut, 1884–89; Pastor of Congregational Church, Oswego, New York, 1889–96; Professor in Yale Divinity School, 1896——. Member of Society of Biblical Literature, American School of Oriental Research in Jerusalem. **Author of** *Genesis of Genesis; Triple Tradition of the Exodus; Story of St. Paul;* and other works.]

Mr. President, and Fellow Scientists, — When the chairs of New Testament science in our principal New England universities were founded, the discipline was entitled New Testament Criticism and Interpretation. At that time "criticism" meant scarcely more than the establishment of the exact text of the twenty-seven canonical books; "interpretation" meant the grammatical rendering of the strict verbal sense. This was a finality. With author's text and meaning you had all that could be asked without impiety, the ultimate "word of God." Relations with other sciences conformed to this estimate of our relative importance.

To-day we may still employ the same subdivision; but we mean more by "criticism," more by "interpretation," and much more by "the word of God." We have not begun to think of our science as profane, but we see something sacred in other sciences.

Criticism now includes the higher as well as the lower. It traces the antecedents as well as the life-history of the writing, its origin as well as transmission, derivation of thought as well as transcription of words. It involves even the genetic study of ideas older than any literature; traditions, beliefs, in which no author, certainly no inspired author, can claim exclusive rights. Inevitably this widening of scope has established new points of contact; for the history of ideas is even less tolerant of artificial segregation and classification into sacred and profane than the history of institutions and events. Let the earlier embodiment be written or oral, be the ideas clearly traceable in surviving documents of parchment, stone, clay, papyrus, or only in institutions, forms, traditions; in either case the modern method leads directly into the wide, free ranges of the history of religious thought.

Even textual criticism overflows its former bounds. To Westcott and Hort a clearly extraneous variant was almost a negligible quantity. "Corruptions," except as they might furnish a clue to the original,

only detracted from the value of a manuscript. Why wish to know the views of writers not inspired, perhaps even heretical? If a distinguished classical philologian now enters our field to reconstruct the neglected Western form of the text and give us a new appreciation of its value, advancing the curious theory of *two* inspired texts, one for the longitude of Antioch, the other for Rome, we shall, indeed, do better to return to Westcott and Hort for an explanation of the origin of the variants, but we should not lose our new sense of their historical value. Thanks to Professor Budde we know that the doctrine of "survivals" applies in textual and higher criticism as well as in biology. The source an historian has employed does not at once cease to circulate. It is only gradually superseded by the writing ultimately preferred. In the mean time transcribers will persistently tend to complete, expand, or assimilate the extracts by comparison of the original. The process is abundantly illustrated in the scribal treatment of New Testament loans from the Septuagint. The variants in this case display the characteristics of atavism, or reversion to type; they may give the pre-canonical form. We know, in fact, that the most extensive and important of the Western variants, the *pericope adulterae*, is an actual extract from the *Gospel according to the Hebrews*. Other cases also can be identified, which represent "survivals" from the extra-canonical, if not pre-canonical literature. This explains why the important variants are confined to the historical books, and are most frequent in Luke-Acts, a narrative confessedly based on earlier documents. Historical value may even attach to corruptions reflecting only later ideas.

But pass to the higher criticism, which asks, Whence has the author himself his ideas and materials? Here the field is full of "survivals" to be traced in their origin as well as in their later adaptation. In relation to Old Testament literature and history this discipline once bore the name "Connections." Earlier, and for a wider range, it was called "Introduction."

Let it not be counted disrespect to the great names of Baur and Holtzmann if we demur to their definition of "introduction" as "Criticism of the Canon." That issues in treatment of the subject as a branch of polemics. But the canon is no more a subject for scientific criticism than the particular selection of books which my religious taste and personal experience may lead me to place on my shelf of private devotions. These twenty-seven are the books which the fathers found to embody their religious faith and to nourish their religious life. *Vox ecclesiae, vox dei.* Of what use to question their taste? Popes and councils are the only judges of canonicity.

Nor can we agree with Jülicher, who defines "introduction," as "that branch of the history of literature which deals with the New Testament writings." The New Testament books do not form a

literary class. The biblical critic is not an art taster. Matthew Arnold has indeed entered our field, but as an amateur. We higher critics are not concerned with the history of literature, but of religion; and we treat the canonical books as sources for that history. They are to us an expression of the leading type of spiritual life in its progressive phases. The rank and station of each element of our science, and of the science as a whole, is measured by its service to this end. Introduction — the higher criticism, analytical and constructive — is subsidiary, as truly as the lower. Criticism exists for interpretation, and interpretation for the sake of the history of religious thought and life, for that is the "word of God." The revelation of God is not in the letter, but in the life; and because the life cannot be isolated, but is a spiritual evolution of the race, therefore we find our point of contact with kindred sciences in the field of the history of religion, the phenomenology of spiritual life.

The development of the higher criticism, so distinctive a feature of the century just closed, cutting quietly away the whole ground of contention from what we used to designate the "conflict of science and religion," has been in this aspect simply a removal of misunderstandings. The gradual adoption of the historical point of view has brought the Bible into the field of science without withdrawing it from that of devotion.

For what we found true of the term "criticism" is true in still higher degree of the term "interpretation." Its history during the past half-century has been one of immeasurable enlargement. From having been almost exclusively grammatical and philological, often minutely verbal, exegesis has become historical. From apologetic it has become objective. At first context was disregarded; then it was seen to be essential to the historical sense; then the idea was widened. Now we no longer mean by context merely the next phrase or adjoining sentence. Not the whole book or author's works includes it all. The context which throws fullest light upon the meaning is the whole complex of contemporary life and thought, its inheritance from the past, its problems, its aspirations, its prepossessions, its whole mode of looking at things. So exegesis too has found God's world not a world of isolation. It is incomplete without the history and sciences once called "profane." "Continuity," "evolution," have become watchwords in this field also.

It may be an independent phenomenon; it may be an effect of the Zeitgeist thus to broaden New Testament science, compelling it to interconnect itself with kindred studies and find its place in the general stream of the history of religion. Such, at all events, is the fact, to our immeasurable uplift and inspiration. The age which saw the rise of the higher criticism could not fail to give us, as it did, our first great histories of New Testament times, and of Jewish

and Hellenistic religious thought. It gave us for the first time a succession of great *Lives* of Jesus and of Paul.

The very fact that in this World's Congress of Arts and Science we are gathered, not in connection with the Division of "Social Culture," as a sub-department under the head of "Religion," but under the Division "Historical Science," as a branch of the "History of Religion," shows appreciation of the facts.

The group of canonized writings to which we apply the processes of criticism and interpretation are an emanation of the religious thought and life of the race in the period of its greatest manifestation. It presents both direct and indirect reflections of this life, but it is impossible that we should understand either the direct reflection attempted in the Synoptic Gospels and Acts, or the unintended reflection which lends to the Epistles, Apocalypse, and Johannine writings their highest value, if we study them apart from the broad stream of contemporary religious development, both Jewish and Gentile. For, as we well know, in that great age of the humanities, when national barriers had broken down, Oriental religion, Greek philosophy, art and literature, and Roman government had become the common property of a united race, religious thought and practice were also intermingled as never before. It is the distinctive feature of New Testament science in our time that it recognizes this interconnection of Christianity in its origins with contemporary religious life and literature, as has not been the case since the great church historian of the fourth century gave us, as a pendent to his critical review of Christian literature, the *Preparatio Evangelica.*

I might mention as symptoms of the wider outlook here at home the new chair of the History of Religions, by which Harvard has created a meeting-point for its two departments of religious literatures and of divinity. Harvard has wisely placed in it a Yale man, the foremost biblical scholar of America, and first speaker of this Department. Had the means been forthcoming, Yale would probably have anticipated her elder sister; for the aim is identical in both universities. Nor is it exceptional. The joint establishment, by coöperation of our greater universities in East and West, of an annual intercollegiate lectureship on the history of religions bears witness to the same.

Once for all New Testament science has become a branch of the history of religion; its canonical books are no longer an end, but a means. We employ them as sources to comprehend the life and thought which produced them. Is this disloyalty to Christian principle? Far from it. It is only what might have been done eighteen centuries ago if the church had appreciated as clearly as our Fourth Evangelist the true attitude of Jesus toward the bibliolatry of the synagogue: "Ye search the Scriptures because ye think that in them

ye have eternal life; and these are they that testify of me; but ye will not come unto me that ye may have life." That is a just and genuine reflection; for to Jesus even the written revelation of his own people, the divine Torah of Moses, was secondary to that "in the creation of God," in nature's bounty and beauty, and in the sense of fatherhood and sonship. To Jesus the life was the revelation; Scripture was a means of approach to it, and was tested by it.

But as symptoms of the times, let us survey rather some results of recent scholarship that are ours only as they belong to Christendom. The trend will be found unmistakably "religionsgeschichtlich." We appreciate the splendid contributions which have come of late to Hellenistic grammar and philology, from the study of papyri and inscriptions and the scanty literature of Palestinian Aramaic. Instead of "Hebraisms" we hear now of "Aramaisms," "Septuagintisms," and "Semiticisms." We are even called upon to surrender our belief that there is such a thing as Semitic Greek, distinguishable from the κοινή, and that style and idiom are not philologically the same in the preface as in the ensuing two chapters of Luke. This demand belongs with the statements classified by the newspapers as "important if true." After all the main advance is along other lines, intersecting those of explorers from other fields. We do not forget Deissmann and Dalman, Moulton, Redpath, or Blass. Ramsay's studies of the political, geographical, and social relations of Asia Minor make us feel less crippled by the loss of Mommsen, however much we desiderate Mommsen's historico-critical judgment. Percy Gardner brings to bear his knowledge of Greek religious thought and institutions to present an *Historical View of the New Testament,* and as a third contribution from a like quarter Jane Harrison's *Prolegomena to the Study of Greek Religion* puts in its true light the great reversion to the mythology of the ancient dithonic divinities which accompanies the decay of Greek national life and the spread of religious mysticism in the rites of mystery-religion. Frazer's *Golden Bough* sets the example of a study in comparative religion, disproving the notion that the conception of a deliverer-god, incarnate, dying and rising again, effecting the redemption of humanity by sacramental union with himself, is the monopoly of any race or tribe. Can the student of Paulinism and its development on Greek soil be indifferent to such research as this?

Years ago Lightfoot's essay on *St. Paul and Seneca* made the existence in both of a common element of Stoic doctrine indisputable. Grafe now helps to set us on the right track by demonstrating Paul's affinity with and employment of the Jewish-Stoic Book of Wisdom, and Tennant strengthens the chain by tracing the development of the Doctrine of the Fall and Original Sin, that seems so strange an innovation on the teaching of Jesus, through the post-canonical

Jewish literature down to II Esdras and the Talmud. Pfleiderer, chief of our modern students of Paulinism, revises his *Geschichte des Urchristenthums,* largely to make use of Cumont's *Textes et Documents relatifs au Mithracisme,* and shows how mystery-religion not only paved the way for Paul, but furnished him with forms of thought and even of ritual.

Still deeper must we penetrate for the origins of the religious dualism which colors the non-Pauline books. The mixed and seething chaos of Syrian magic, theosophy, and mysticism, out of which appears that gnosticism which soon rivals Christianity in its claims upon the religious thought of the Graeco-Roman world, seems almost to defy analysis. But Friedländer's *Vorchristliche Gnosticismus* has obtained now a wider and sounder basis of fact from Brandt's scholarly study of the *Mandaean Religion* with its astonishing survivals of the mythology and legend-lore of the mixed peoples of the East. Nor are there wanting investigators of the more doubtful analogies of Buddhistic and Egyptian religious thought and literature.

There will be pursuit of false clues, and premature conclusions, among which I must venture to reckon our own lamented L. L. Paine's resort to Philo and the Alexandrian school as ultimate source of Paul's Logos doctrine; as if Philo himself were not rendering into the language of the schools that older Palestinian form of cosmological speculation which he, as well as Paul, found already reflected in the Hochmah literature with its Hebraized Stoicism, and its hypostasis of creative and redemptive Wisdom. No; the *Evolution of Trinitarianism* was a far less simple matter than a patch of Philo and a patch of Paul. Still, like the other great racial religious ideas, it *was* an evolution — and all the more divine for that. It belongs to the phenomenology of religion. Therefore, Gunkel and Bousset and Charles seem to me to be working the richer lodes of our day, and certainly our Congresses and Conventions are "religionsgeschichtlich." At Stockholm in 1897 it was Chantépie de la Saussaye who discussed *Religious Research by the Comparative Method,* and he was followed by Arnold Meyer, who reported the progress of our science under the title *Die moderne Forschung über die Geschichte des Urchristenthums;* but the burden of his admirable summary must be given in his own language: " Es gilt, das Urchristentum hineinzustellen in einen grösseren Zusammenhang, seine Geschichte als einen Teil der Religions-, Kultur- und Menschheitsgeschichte überhaupt zu begreifen, sein Werden und Wachsen zu beobachten, innere und äussere Vorgänge in ihrer Wechselwirkung zu betrachten." Or, to borrow Meyer's own quotation from Sabatier, "To understand Christianity, implies a clear and comprehensive grasp both of the bond which unites it with the religious development of mankind, and of the vital element which distinguishes it; also of the sequence and

character of the forms which it has assumed." A better definition of the relation of our science to kindred sciences cannot be formulated. It was also well to emphasize, as Meyer has done from the very start, what is that vital, distinctive element of Christianity, which has enabled it to take up and assimilate congenial elements from surrounding soil, instead of being itself assimilated. "Not primarily the belief in Jesus as the Son of God, but Jesus' own belief in his mission and his relation to God his Father." "Not primarily the belief in Jesus as the Son of God," because the gospel as Paul preached it is already secondary. But the gospel of Jesus is for us approachable only through the secondary gospel, whose distinctive feature is certainly this belief.

It is also significant from this standpoint to note how just a year ago Pfleiderer, at the International Congress of Theologians at Amsterdam, defined the preliminary problem of Paulinism. His address was entitled *Das Christusbild des urchristlichen Glaubens in religionsgeschichtlicher Beleuchtung;* and he too lays chief stress upon the need for reaching the distinctive element in the Gospel of Paul through its embodiment in conceptions and forms current in both Gentile and Jewish religious life. For Paul was the natural heir of the latter, but adoptive heir of the former also, and through him more than all others Christianity became endowed with the great Greek and Stoic ideas of a creative Logos, a mystic union, sacramentally renewed, of the human spirit in its weak and corruptible embodiment with the life-giving divine spirit, and of a race brotherhood, or new social order of humanity. This absorption by Christianity of the aspirations and cravings expressed in the contemporary world-movements of religious thought Pfleiderer has summed up as follows: "The postulate of a Deliverer-god (θεὸς σωτήρ) who shall guarantee both the salvation of the individual soul in the hereafter, and also the dominion of redemption and peace for the social commonwealth on this earth, was already present in the visions and cravings of the Gentile world at the beginning of our era; the question was only, Whence should it obtain the certainty of his real existence? The Christology of the Church gave the answer by welding into a personal unity the Messiah-king of the earthly kingdom of God and the mystical conqueror of death and dispenser of life. Thus arose the ideal form of the eternal Son of God, who historically became man, died, passed through the underworld overcoming Death and the Devil, rose victorious, ascended to heaven, sits on the right hand of God as Sovereign of the world, and is to come upon the clouds to judge the quick and dead. All these doctrinal conceptions are also found already present in the religious cults of decadent antiquity, here and there, in Orient and Occident, in the varied forms of Jewish apocalypse, Oriental mysticism and Gnosis, Greek speculation and Roman emperor-worship.

Only the unifying subject was wanting for the synthesis of these predicates, the nucleus of crystallization, about which this fermenting, chaotic mass of religious ideas might shape itself into a new world of faith and hope comprising both the present and the hereafter. This point of unification was supplied in the person of Jesus, the Galilean national Redeemer and King of the Jews, who through the cross became the World-Redeemer and King of the universal kingdom of God."

Such utterances make plain the trend of New Testament science in our day. Both criticism and interpretation have become historical, and, as subsidiary to the history of religion, have been brought into closest contact with kindred sciences.

It remains to be seen to what extent the growing sense of what is held in common enables us to differentiate with greater precision that which is distinctive and vital; absorbent, but not absorbed.

Since Baur we apprehend Christianity historically as made up of the Petrine and the Pauline factors. What, then, is essential Paulinism and essential Petrinism? Light comes when we begin to see that Paul is more than a Rabbi, far more than a Rabbi of that period of anti-Christian reaction, after the destruction of the temple, which so dominates our conceptions of Rabbinism. Paul may or may not owe to Gamaliel, the great latitudinarian of his age and student of Greek literature, something of his later broad-minded attitude toward "whatsoever things are pure, are noble, are worthy, are of good report." Anyway we must appreciate his sense, not only of a divine summons *in* his conversion to an "apostleship to the Gentiles," but of having been even before it "set apart," like Jeremiah, "from his mother's womb to be a prophet to the Gentiles." Paul regarded the ideas imbibed in his pre-Christian career as a providential equipment for the proclamation of his world-gospel. He is touched as no Palestinian Jew could be with the Gentiles' "groping after God, if haply they might feel after him and find him." He has a feeling of the burden of human guilt, of the inheritance from Adam of a sin-polluted, weakened nature such as no Jewish writings reveal save those deeply impregnated with the moral earnestness, and at the same time the pessimistic dualism of the Stoic school, the Wisdom literature which evinces the contact of Judaism with Hellenism on its higher levels. Paulinism is only half intelligible until we know how other national religions besides Judaism were disintegrating under the double solvent of a world-empire and a cosmopolitan philosophy, and giving place to individual religions, distinguished like Christianity by their adaptation of ancient beliefs to a sacramental mysticism aspiring to participation in the divine nature, their avatar doctrines of the redeeming Saviour-god, their hope of personal immortality, and ideals of a universal brotherhood of believers.

So, too, we shall fail to understand the more conservative, the Petrine type of Christianity, if we frame our ideas of popular Judaism exclusively on the basis of that which, after the extermination of priestly hierocracy and zealot nationalists, and the extrusion of Christianity, carried reactionary Pharisaism to unimpeded control. The doctrine of vicarious atonement is so far from being a Pauline innovation, that in its simpler form, the application of Isaiah LIII to the suffering of Jesus, we only come across it once in all the Pauline Epistles, and that is not where Paul is giving his own doctrine, but the teaching "received" by him at his conversion, "how that Christ died for our sins according to the Scriptures." The doctrine of the atonement is pre-Pauline. In the simple, non-ethical form of substitutionary expiation it is a doctrine of IV Maccabees, of I Peter and perhaps of I John; but Paul does not so much as refer to the Isaian Suffering Servant. Needless to say, it plays no part in the message of Jesus. Yet it is so great a factor in Christianity that Ritschl can say: The doctrine of the atonement *is* the Gospel. Paul superimposes upon it his "moral view" by adding the conception of mystical death and resurrection with Christ; but its origin is Petrine.

Almost as much might be said of what we used to designate the "higher Christology" of Paul, which has two roots, the apocalyptic and speculative or cosmological, both tinctured by Hellenism. There is not the slightest consciousness in Paul's epistles of any occasion for defending his Logos doctrine — for such it is in all but the name — against Ebionite conceptions in the mother-church. He argues strenuously against a kind of Arianism which commits the illogical compromise of assigning to the Son a place among angels, principalities, and powers, where he is neither human nor divine; but there is no sign that Paul's doctrine of the divinity of Christ was obnoxious to the Twelve, nor even that his assumption of Christ's preëxistence as Second Adam gave offense. On the contrary his bloody persecution of the Way, "even unto foreign cities," seems already to presuppose a cult Paul could honestly consider as violating the prohibition of Deut. XIII, against teaching to serve other gods." Again we must say the doctrine of divine sonship is not derived from Paul's cosmology and Wisdom doctrine, but *vice versa*. The order is first the gospel of Jesus the Son of God, second the Synoptic superimposition from apocalyptic sources of the Son of Man, third the Pauline Second Adam in opposition to a type of Arianism before Arius, merging into the Johannine Logos doctrine.

Gunkel's *Schöpfung und Chaos* was one of the epoch-making books to teach us not to judge Judaism as it was in the days of Jesus and Paul by documents of the Rabbinic period, expurgated and altered by censors whose special object was to prove that Christian ideas never had the slightest justification in the authentic and orthodox

teaching. R. H. Charles's editions of the apocalyptic and pseudepigraphic writings, and Kautzsch's translations are compelling us to see something more of Judaism than what its official defenders hold up for us to see in the Talmud and the officially delimited canon. The ideal of the religious purists, attained after all disturbers of the peace had been cast out, was by no means the actuality of the earlier time. My colleague at Yale, Professor F. C. Porter, once pointed out that the attitude of the prophets toward the Messianic hope of their time is not that of introducing a new truth. They merely criticise and refine an accepted popular expectation. In the period of apocalypse this popular hope appears with further accretions from the crude mythology of popular syncretism, whose Gentile affinities have been shown by Brandt, Gunkel, and Bousset. The rabbinic censors of Jamnia and Tiberias made easier work of the later apocalyptic literature by excluding it from the canon altogether. But the Gospels move in an atmosphere saturated with the apocalyptic ideas of the post-canonical literature, and even Paul, the critical Rabbi, rejoices in his "visions and revelations of the Lord." Apocalypse is the very root of his religious life, his cosmology is reflective.

The teaching of Jesus presupposes a religious life and thought already affected to the core by the antithesis of a present and future world, and by a morbid supernaturalism into which he infuses the antidote of a simple and teachable faith, seeing God in things as they are.

So it comes that the portrait of contemporary Judaism requires to be repainted, as well as that of Hellenism. The Petrine gospel, too, has a far broader substructure than mere Old Testament religion. The transition from the prophets to the period of the New Testament is a transition to a world imbued with a sense of race-unity, conscious of a world-order under a single supreme Being, aspiring to individual immortality. The mere change from national supremacy to individual life in the world to come as the goal of religious hope is revolutionary. If, then, Pauline Christianity is but half intelligible without the Book of Wisdom and II Esdras, what can we make of Petrine without the literature which rabbinic Judaism repudiated when it cast off the Minim and all their works? We have need that Baldensperger rewrite his *Messianisches Selbstbewusstsein Jesu*, devoting a full volume to *Die Messianischapokalyptischen Hoffnungen des Judenthums*, that Charles should give us his *Critical History of the Doctrine of a Future Life in Israel* (1899), and Volz his *Jüdische Eschatologie*. Our understanding of Petrinism required all the researches of Wellhausen, Lietzmann, and our own Nathaniel Schmidt, on the origin and significance of the title Son of Man. But these were partial contributions. The comprehensive need was that the great work of

Gfrörer, already lifted to a plane of superb scholarship by Schürer, should be still further advanced by Bousset's *Religion des Judenthums im neutestamentlichen Zeitalter* (1902), and that the ensuing year, the year just past, should see the issue by Bousset and Gunkel of a series of *Forschungen zur Religion und Literatur des Alten und Neuen Testaments*, beginning with Gunkel's demonstration, not in a spirit of depreciation, but as an evidence of its vitality and adaptation to the function of a world-religion, of the syncretistic origin of Christianity. His monograph is well entitled: *Zum religionsgeschichtlichen Verständnis des Neuen Testaments*.

I must deal briefly with the question of the distinctive vital factor in the gospel of Paul, of Peter, of Jesus. It is more nearly related to the subject of my colleague, Professor Burton, than to mine.

The stride from the relatively simple Gospel of Peter, reflected in substance by the Synoptists, to the Gospel of Paul, is a prodigious one; so great that the Greek churches, indoctrinated in Paul's speculative, mystical presentation of the spiritual Christ, with intentional subordination of the historic Jesus, might well have been expected to go the way of the Gnostic theosophists, or Marcion, out-Pauling Paul, separating from the Palestinian mother-church, where emphasis was laid rather upon historic tradition and the *nova lex*. The fact that Christian theology advanced rather upon a new plane of higher unity, doing justice to both Semitic and Hellenic conceptions, is due to the inspired genius who brings forth at Ephesus, centre of the Pauline Greek church, the so-called Johannine literature. In the Epistles and Gospel of John true Paulinism reacts against the ultra-Hellenistic tendencies, combining his higher Christology, his mysticism, and his rapidly Hellenizing eschatology with a determined hold upon the historic manifestation of the Logos "in the flesh" and insistence upon the new-old Commandment of Love. The Johannine literature represents Christianity in its twofold development from the Petrine and from the Pauline type. It takes the *via media* of historic tradition and ethical earnestness, combined with freedom and spirituality of interpretation; while on either flank are seen the extremes of Ebionite reaction and Gnostic syncretizing theosophy.

The Petrine, the Pauline, and the Johannine transitions all represent great strides of religious thought; too great for our comprehension if we forget the conditions of the age, and fail to realize that what Peter, what Paul, what the Johannine writer, furnished, was not the elements, but the pole of condensation; not the predicates, but the unifying subject. The age was the world's transition from national to world-religions, an age of the interfusion of Orient and Occident. It held the elements of new racial types of thought and aspiration, new conceptions of the world-order, new aspirations

for the individual human soul in its relation to the whole, in temporary mechanical suspension.

Paul's cosmology, as we have seen, is built upon elements of largely Greek and Stoic origin, though the point of infiltration is to be sought further back than we used to seek it, back of Paul himself in the Hochmah writers with their hypostatizing of the divine creative Wisdom, and the effort of scribal theology to adjust its growing conception of God's transcendence to the doctrine of his special providence to which they were bound by the past. Paul comes by his doctrine of the preëxistence of Christ as the Divine Wisdom, not by what he learned from Peter, nor even from Stephen, but from the school of Gamaliel. He vitalizes and transfigures it by the religious and moral principle of Christianity: Love as the essence of the Creator's motive and the ethical principle of the creature. The mystery of being, hid from the foundation of the world, but now made manifest, is that "God in love foreordained and chose us in the person of the Beloved to be an adoption," "joint heirs" with our Christ of the Creation.

Paul's soteriology and connected doctrines, his anthropology, doctrine of flesh and spirit, redemption, mystic union with the Redeemer in death and life, rest largely upon conceptions held in common with mystery-religion: the avatar doctrine of incarnation and redemption, the θεὸς σωτήρ, and ἐνθουσιασμός of Greek and Oriental cults. Here too the primary point of contact was earlier than Paul's time. The avatar doctrine of Ephesians, with its picture of the descent and ascent of the Spirit of the divine Wisdom, which, according to the Book of Wisdom, "fills the world," the Spirit of God in Christ victorious over the hostile powers of the underworld, ascending to God's throne, and thence filling the universe of animate being with the emanation of its own vitality, was not new when Paul advanced it; it had become almost as much a part of Jewish apocalypse as of Greek and Oriental mystery-religion. Jesus' parable of the Strong Man armed, whose goods are spoiled, his captives freed by the Stronger than he, in which the fathers see an allegory of Christ's descent to the underworld and victory over its hostile powers, already affects Paul's representation of the triumphal march of the Spirit of God in Christ in Ephesians and Colossians. Paul even quotes therewith a pre-Christian Jewish apocalypse whose theme is this avatar of the divine Logos awakening dead Israel, while the Gospel of Mark itself puts Jesus personally in the place of that Spirit of God which in the original form is victor over the Strong Man armed.

Paul vitalized a Jewish-Oriental interpretation of Ps. 68 by identifying that Wisdom and Power of God which takes its redeeming, victorious way from heaven to earth, from earth to the realm of death, delivering death's prisoners, and thence to the right hand of God,

and which is diffused again from heaven through all animate creation, with "the mind which was in Christ Jesus, who humbled himself and took on him the form of a servant and became obedient unto the death of the cross." "Wisdom" has sometimes for Paul also the character of a demiurgic hypostasis, a divine effulgence as in the Book of Wisdom identifiable with the preëxistent Christ. But it has not the Greek type of simple rationality (νοῦς or λόγος). It is the Hebrew Wisdom, redeeming divine Love, going forth to seek and save the lost. This ethical character of the Pauline Logos doctrine is retained by the Johannine.

Paul's eschatology, mediating, by his doctrine of the spiritual body, between the crudities of the undeveloped Pharisean idea of resurrection as a return to flesh, and the Greek of spiritual immortality advances from the idea of a New Jerusalem, brought from heaven to us, to that of a departure to be with Christ. It gradually supplants the enlarged Judaism of an "Israel of God" by the conception of a commonwealth of redeemed humanity — nay, of beings on earth and in heaven, visible and invisible. This doctrine was not a creation *ex nihilo*, nor was Paul the first Hellenist nor even the first scribe of the kingdom of heaven to bring forth things new as well as old. It seems a long step from the brotherhood Jesus recognized among all who made it their aim to do the will of the common Father; but the principle of service as the measure of greatness, "even as the Son came not to be ministered unto, but to minister," must inevitably reach this result as soon as it assimilated the Stoic principle of the organic unity of the race.

The single point of crystallization was the doctrine that "Jesus is Lord," the Son of God; and to Paul that involved the right to metamorphose the Son of David and Son of Man of the Petrine gospel into the Second Adam, the ἄνθρωπος ἐπουράνιος, the θεὸς σωτήρ, of his own.

Were we in like manner to analyze the embodiment of the Petrine gospel, we should find here two elements, largely from the popular religion of apocalypse, but largely also from the Galilean peasant's sense of sin and hope of forgiveness, crystallizing around the nucleus of a new gospel. Jesus, too, from the nature of the case, built upon and embodied at least the conceptions of the forgiveness of sin and the eschatology of apocalypse in his teaching. It is a matter of serious doubt, however, whether the identification of himself with the coming Son of Man ever formed part of his message. For my own part, I cannot accept the radical view which wholly denies his use of the term. I am fully convinced that its wide dissemination in the synoptic gospels is a later transformation dating from the period when the primitive church lived in the atmosphere of apocalyptic expectation. But grant that the grammatical sense of the Aramaic words be sim-

ply "the man," or "the mortal," and that whatever specific sense attached to it would be by virtue of a semi-mythologic supernatural use which Jesus cannot have applied to his own person, I still fail to see why he may not have employed the term objectively in his eschatological teaching, of the coming Judge, the purifier and refiner of Israel proclaimed by Malachi and by John the Baptist. We must leave it to criticism whether Jesus' references in the third person to this apocalyptic figure were not transformed after his resurrection into a representation that he himself would thus appear. This unconscious change would require but slight lapse of time when the elements were already in solution. I think, however, in spite of this being called "the self-designation of Jesus," that we may already say such was not the fact. However marked the apocalyptic features of his preaching, Jesus' favorite conception of his mission, and his relation to God and men was not that of the apocalyptic figure who comes to judgment with the clouds.

The supreme question, as Meyer has so wisely said, is, after all, the vital, distinctive element in the gospel of Jesus himself; not the doctrine that he was the Son of God, though that became the focus of all later developments, but "his own belief in his mission, and his relation to God his Father." This relation is indeed expressed by the designation "the Son," so frequent in the Fourth Gospel, but not by "the Son of Man," and not by the "Son of God," as usually understood.

We learned long since not to import into this synoptic title the metaphysical sense of the Fourth Gospel. The synoptic writers, and certainly Jesus himself, in relating his vocation as the Son of God, were not dreaming of superhuman attributes. The commentators tell us the title is employed in the "theocratic sense" as belonging to the heir of the throne of David; but while there are in Acts two allusions to "the sure mercies of David" and the promise of the continuance of his dynasty, there is no phase of the Messianic hope which so little appeals to Jesus as this, none which he so uniformly antagonizes and suppresses. Of all types of Messianism nationalistic zealotry was least that of his mission. How, then, does Jesus' sense of his Messianic vocation express itself in the form of the *Bath Qol* at his baptism, "Thou art my Son"?[1] We must answer this question by observing, first, a general principle Charles has established regarding all Messianic titles, that they apply reciprocally to Israel and its representative; second, by noting the feature distinctive of Jesus' own teaching. On the principle of Charles we perceive at once in what

[1] The variation of the tradition (Luke III, 22, Western text, has, "this day have I begotten thee," instead of "in thee I am well pleased"), and the Pauline cast of the Markan phrase (cf. Mk. I with Eph. I) which underlies Matthew and Luke (*a* text) justify the suspicion that only the words "Thou art my Son" represent the original.

sense the Messiah is called "the Son." He is the Elect or Chosen, as representative and head of the Elect or Chosen people. He is the Beloved because they are "the Beloved people." He is called ὁ Ἅγιος, "the saint," because they are οἱ ἅγιοι, "the people of, the saints of, the Most High." Nay, even the designation which is most relied on by sticklers for a difference in kind as well as degree between Christ's sonship and ours, the Johannine μονογενής, the "only-begotten," is paralleled thus in II Esdras: "Thou hast said that Israel is thy first-born, thy only-begotten." In short, there is nothing so fundamental in the Messianic hope as the doctrine resting on Ex. iv, 22, that Jehovah chose Israel out of all the nations to be an adoption. He "called his son out of Egypt." This conception of the sonship of Messiah, *the* Son *par éminence*, is far more fundamental than the so-called theocratic, and it is that which really corresponds both to Jesus' personal consciousness, and to his proclamation of his mission. It is not a sense of royalty that is expressed in the utterance, "All things are delivered unto me of my Father, and no man knoweth the Son save the Father, neither the Father save the Son and he to whomsoever the Son willeth to reveal him." It is a personal sense of adoption giving the peace of filial communion to one who in the purity of his own heart has seen God, and knows he can bring all that will receive his easy yoke into the same blessed communion; one who knows the kingdom at hand, because in its essence he knows it realized within him. He knows himself *a* Son because he has entered the kingdom. He knows himself *the* Son because as yet others await his revelation to become fellow heirs.

The proof that Jesus' consciousness of sonship is of this type is to be found in the proclamation of his mission in his most undisputed utterances. What is the whole aim and purport of the Sermon on the Mount but to show what kind of conduct corresponds with the daily manifested disinterested goodness and forgiving kindness of God; and that men must imitate this in order to "be sons of the Highest; for he is kind even to the unthankful and the evil." What does Jesus offer to those who with him forsake home and kindred that they may hear the will of God and do it? They are to be his spiritual kindred, children of the one Father, his "brother and sister and mother."

It is true that Jesus has deep sympathy for the apocalyptic eschatological preaching of the Baptist, that he reacts at last in strong antagonism against the religion of scribes and Pharisees, the orthodoxy of his day. But it is after all this dominant type, nomism, legalism, on which Jesus mainly builds, and from which he takes his departure. The ideal of the genuine Pharisee and his are essentially the same. Israel, the people of God, is to be his son, and as such his heir, lords of the creation. This is to be realized in God's kingdom, his sovereignty, which is the doing of his will on earth as it is done

in heaven. Only, for scribe and Pharisee the will is all revealed in the written Torah, the Law, ceremonial and moral. Whoso accepts its yoke is a son, the common people that know it not are accursed. For Jesus the will is revealed in the impulse of kindness in the heart of a compassionate Samaritan, in the daily example of the living, loving Father in heaven. He offers his call to publicans and sinners — yes, when faith comes to meet him across the barrier of race and religion, he offers it even to the heathen Syrophœnician. Entrance into the brotherhood has at last but one condition, "Whosoever will do the will of my Father." This is the one aim for himself and his followers, "Thy will, not mine, be done"; but the will is not the mere written Torah as given to them of old-time. It is what the God whom Jesus sees and knows is ever doing in his spirit of limitless loving-kindness. Paul has paraphrased it as no other could, "Be ye imitators of God as beloved sons (the Messianic aim), and walk in love (make love your *halacha*) even as Christ also (the Beloved Son) loved you and gave himself up for us an offering of a sweet savor unto God." This is the "reasonable worship" (λογικὴ λατρεία) by which we are "transformed from this world by the renewing of our minds," and come to "know (as sons who boast of 'knowing the will') the good and acceptable and perfect will of God."

The consciousness of Jesus is personal and ultimate. It is a consciousness of divine sonship. It lays hold upon the Messianic hope of Israel because that is akin to it, but it is the greater absorbing the less, not *vice versa*. The kingdom of God is to Jesus the doing on earth by all of the will of his Father. But the knowledge which he has of his Father, of his nature and of his will, is not delivered to him by the scribes or wise men of his people; it is given to him of his Father, who is seen of the pure in heart, and reveals it "unto babes." What verification by actual observation is to the calculations of the astronomer, that the insight of Jesus is to the religious heritage of his people. He sees God in nature, in history, in man, and therefore knows. As voicer of the highest, truest, religious instinct of humanity we may indeed call him Son of Man. But call him rather just "the Son." Our highest knowledge of the Father is that which the Son hath willed to reveal. This is the distinctive element of the gospel, the nucleus from which our New Testament science must ramify in all its relations with kindred sciences.

THE PRESENT PROBLEMS OF NEW TESTAMENT STUDY

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THE topic of this paper was not chosen by me, but assigned by the Programme Committee of the Congress. I am required to state the problems of New Testament study as they confront scholars to-day. I am asked to take my stand on the frontier of New Testament study and formulate the questions which the scholarship of the immediate future will be called upon to investigate and answer. As far as possible personal opinion is to be eliminated, and the statement to be objective and representative of the most enlightened New Testament scholarship.

The progress of biblical study has converted the New Testament student from an interpreter of a body of sacred and authoritative literature into the historian of a movement of mighty significance in the history of religion, the rise of Christianity. So long as Christian thought was controlled by the conception of the plenary inspiration of the New Testament Scriptures and the final authority of each passage of them, the only function of the New Testament student was that of the literary interpreter, and his only tasks that of interpretation and such others as were necessary to it. To the interpretative task the history of the canon was subsidiary as showing the process by which the books contained in the canon attained — rightly, of course, it was held — their position of eminence and authority. Textual criticism furnished the letter of the inspired text. Grammar and lexicography were implements of its interpretation. And there was even a place for the history of New Testament times, and the introduction to New Testament books, since these contributed to the interpretation of the books by furnishing their historic setting.

Such was once the point of view from which the work of the New Testament student was defined. Such is still the point of view from which some regard it. But with the great body of New Testament students this is no longer true. Clear definition of the nature of the interpretative process and the more faithful application of it to the New Testament have made it impossible to maintain that

there are no inconsistencies in statement of fact or of doctrine in the books of the New Testament, and have compelled the interpreter, if he would be truly an interpreter, to become historian, pledged, not to the discovery, in the books that he studies, of a self-consistent body of Christian doctrine and a self-consistent representation of historic facts, but rather pledged to find the thought of the several writers, whatever that is, and to set it forth with all attainable accuracy and clearness.

Here, of course, the New Testament student might have made a stand, defined his task rigidly as that of the interpreter, and rested content with the exposition of the thought of each book, regardless of the consistency of this with the statements of other books in reference to historic fact or doctrine. But to have pursued this course would have been to deny the motive under the impulse of which he had undertaken his task. For the study of the New Testament has not been, as a rule, carried on by men who were simply professional interpreters, satisfied to carry to its perfection a scholastic process, arbitrarily defined. They have been men who were seeking for truth, and who, discovering differences in statement of fact in their sources, could not be content with the mere historic fact of such difference, but were impelled by the very motive that made them students of the New Testament to inquire what the historic fact was of which the sources contained these diverse representations; and, finding in the New Testament books different conceptions of religious truth, could not rest content with the statement that as interpreters their task was finished when they had found the thought that underlies each of the variant representations, but have been compelled to press on to ask how these different conceptions are related to one another, if not also ultimately how each of them is related to reality.

But this transformation of New Testament study into an historical discipline raises some new and difficult questions concerning the scope and definition of the discipline — questions on which there is not as yet entire agreement among New Testament scholars, and which it belongs to this paper therefore to state.

If the New Testament student is simply an historian, can he any longer claim to possess a distinct field, or must the New Testament department be merged in that of the history of early Christian literature, or in that of early church history? To the proposal that it be merged in the history of early Christian literature the answer of the great body of New Testament students will, I am confident, be a prompt and decided negative. The books of the New Testament are in the broad sense of the term literature, and, being early Christian writings, may properly be included in a history of early Christian literature. But it is not as literature that the New Testa-

ment student is now or ever will be chiefly interested in them. To him they are incomparably more important as the sources for history — a history of events and ideas. In this history literature indeed has a place, but only as the record and reflection of a tremendously important religious movement, namely, the rise of Christianity; and the rise of Christianity was not a literary event, and can never be adequately viewed from the point of view of a history of literature.

It is quite another question, however, whether New Testament study is to be merged in early church history. The rise of Christianity certainly belongs to the history of Christianity, and it is a question fairly open to debate whether it is scientific to recognize a New Testament department, the limits of which are defined in advance by the limits of the canon adopted by the church, and whether this field of study should not rather be turned over to the church historian, who in dealing with the early period will, as in every other period, use whatever sources are at his command. Nor when it is once granted that the New Testament student is properly an historian, dealing with the history of literature, events, and ideas, can it well be denied that they are right, in principle at least, who maintain that the New Testament department must be transformed into the history of the rise of Christianity? The student of the life of Jesus or of the life of Paul can never be debarred from using any trustworthy source for these chapters of history because the church of the second or of the fourth century failed to include it in the sacred collection. In fact, this principle is already practically conceded. The transformation of the New Testament department from an interpretative and semi-systematic discipline into a distinctly historical study is already well advanced, and lacks little but a change of name to complete it. Granted the correctness of Oscar Holtzmann's critical judgment respecting the historical character of the Gospel according to the Hebrews and the Gospel according to John, who would deny that he is right in his attitude toward these books as sources of the life of Jesus? Yet, on the other hand, it still remains true — and, so far as there is now any basis for forecast, is likely to remain true — that the books included in the canon furnish the incomparably most important of all the direct sources for the history of the rise of Christianity. So predominant, indeed, are the books of the canon among these sources that little would be gained from any point of view by a change of name. The principle that whatever other literature furnishes contributory information, either respecting the general historical situation or more directly concerning the origin of Christianity itself, is and must be used by the New Testament student, is so generally conceded, alike by those who would change the name of the discipline and by those who would oppose

the change, that the question is increasingly reduced to one of name only.

We cannot be far wrong in affirming that, however we may for convenience divide or name departments, the New Testament student of to-day recognizes that the books of the New Testament constitute his chief sources, but claims for himself also all other literature that can contribute to the accomplishment of his task of discovering how Christianity arose; recognizes that the interpretation of these books is his central work, to which all else must be related as contributing to it or as built upon it; yet refuses to be limited to the business of literary interpretation, and claims the right as historian, not only to discover that his sources affirm this and that, but also to inquire whether and how far what they say corresponds to historic fact; and so defines as his field the beginnings of Christianity and as his problem whatever within that field belongs to the historian. When, therefore, we speak in this paper of the books of the New Testament, it should be understood that what is really referred to is all those early Christian books which constitute the sources for the history of the origin of Christianity, and that in so designating them we are simply naming the whole group *a parte potiori*.

But this very definition of New Testament study as distinctly historical raises another question pertaining to the scope of the science. Does historical study include the interpretation of events and the valuation of teachings as well as the interpretation of literature, the statement of teachings, and the tracing of historic connections?

Into this question, which is of far-reaching importance for the definition of the nature and the determination of the function of New Testament study, alike the limits of space and regard for the rights of my colleague, Professor Bacon, forbid me to enter at length. It may perhaps, however, be permitted me to offer two suggestions. First, I venture to think that historians in general, and New Testament historians in particular, will not long consent to exclude from their own field that which Harnack [1] well calls "the business and highest duty of the historian," namely, to "determine what is of permanent value." If with Percy Gardner [2] they hold "that events of history, when interpreted, may be the basis of doctrine," they are not likely to concede that such a process is illegitimate, or that the New Testament student is debarred from undertaking it. The impulse which alone is adequate to promote vigorous prosecution of New Testament study will not permit the student to content himself with statements of objective historic fact, consenting to be debarred from asking questions of value and permanent validity. The strength of the impulse to exceed these bounds is shown in such books as Wernle's *Beginnings of Christianity* and

[1] *What is Christianity*, p. 13. [2] *Hibbert Journal*, April, 1903, p. 569.

Harnack's *What is Christianity?* — in both of which the historian is evidently chiefly interested in the question: What is of permanent validity? What is, not simply historically true, but normative for human life? If it be maintained that these are not questions for the historian, then it will be necessary to answer that the New Testament historian must always be something more than an historian.

My second suggestion is that, if the New Testament historian may legitimately claim the right to enter this field, it is equally evident that he cannot as New Testament historian claim exclusive right to it. Events can be interpreted only when seen in relation. For the crudity that can discover profound meanings in events apart from their place in history the historian can have no tolerance. And the broader the view which one is able to take, the wider the horizon in which he can set the events of New Testament history, the truer are his interpretations likely to be. To extend that horizon to include all the history of early Christianity is well, not to say indispensable to any just interpretation of events. To take in all biblical history is better — shall we not here also say indispensable? To sweep in the whole history of Christianity, this is undoubtedly better still. To include the knowledge of religion at large, and, not least, a knowledge of religious experience as it can be studied in living men, this is best of all. The New Testament student who best apprehends the nature of his task will most gladly welcome every coadjutor who brings to the study a large historical knowledge and a large horizon in which to set the knowledge which the New Testament student himself possesses in his own special field.

With such a definition and conception of the field of New Testament study, we may divide it into four great divisions.

I. Preparatory studies: those which are prerequisite to literary interpetation, including —

(1) Textual criticism.
(2) The language of the New Testament.
(3) The history of New Testament times, both in the Jewish and the Græco-Roman world.
(4) Introduction to the New Testament books.

II. Literary Interpretation of the New Testament books: the discovery in respect to each New Testament book of the course of thought of which it was the expression.

III. New Testament History, including both the history of events and the history of thought and, as a necessary element of the process, criticism of the results of interpretation as respects matters of historic fact.

IV. Indirectly contributory sciences: such as the history of the canon, the history of the text, the history of interpretation, and the history of criticism.

I. *Preparatory Studies*

(1) *Textual criticism.* By the common confession of scholars, the present period of textual criticism of the New Testament dates from the publication of Westcott and Hort's text and introduction in 1881. Availing themselves of the immensely valuable work of such scholars as Griesbach, Lachmann, Tischendorf, Tregelles, and Scrivener, the Cambridge scholars so organized and interpreted the accessible facts that all who have succeeded them are compelled to state their views very largely in the form of agreement with or dissent from their opinions. Nor are there to-day visible upon the horizon any signs to justify the expectation either of another work so epoch-making as theirs, or of an achievement comparable for significance with that foundation-laying task which was accomplished by those great predecessors of Westcott and Hort already named. What remains to be done belongs rather to the completion of a structure which in its main line is already built, than either to those pioneer tasks which prepare the way for great constructive work or to such constructive work itself. Yet the tasks that remain are in themselves both large and important, and there is every reason to be glad that there is so large a body of earnest workers whose tastes incline them and whose ability fits them to undertake and accomplish these labors.

The work of Westcott and Hort was significant in three directions: (*a*) in the formulation of the methods of textual criticism; (*b*) in the outlining of the history of the New Testament text, especially in the first four centuries of its existence; (*c*) in the actual construction of the text. In all three of these particulars their work marked an advance on that of their predecessors. In respect to the first and second of them, few scholars will deny that in the main the views of Westcott and Hort have been sustained by the verdict of scholarly criticism and by subsequent discovery. Yet it would have been surpassingly strange if their work had been in all these things so decisive as to leave no room for doubt or further investigation. So strange a thing has, at any rate, not happened. In two important respects Westcott and Hort were compelled to work with but an imperfect presentation of the data: in the matter of quotations from the New Testament in the Fathers, and in that of the text and history of the early versions. The tasks with which scholars since their day have been engaged, and with which those of the next following decades at least are likely to be engaged, are chiefly in the more thorough working of these two fields, and in the criticism of the Westcott and Hort theory of the history of the text on the basis of such reworking.

Definite and full results in reference to the quotations must await for their achievement the completion of those editions of the Fathers now in preparation, and in which such splendid progress has already

been made — the Berlin and Vienna editions of the Greek and Latin Fathers, and the Paris editions of the Oriental Christian literature. As these tasks progress, it will become increasingly possible to replace those great collections of quotations which Burgon made with others that will be of far greater value because they will be of wider scope, and based, as respects the Greek and Latin Fathers at least, on a critically edited text.

In the matter of the versions, Wordsworth and White are steadily carrying forward their tasks of editing the Latin texts of the New Testament, and so laying a foundation for more exact knowledge of the history and character of the Latin versions. Horner is prosecuting his work of editing the Bohairic version of Egypt. The practical recovery of Tatian's *Diatessaron*, and the discovery by Mrs. Lewis and Mrs. Gibson of the Sinaitic manuscript of the Syriac gospels, supplemented by the scholarly labors of Gwilliam, Harris, Burkitt, Hjelt, and others, not only in spite of, but in part because of, their differences of opinion on many points, are laying a foundation for a far more accurate knowledge of the history and text of the Syriac versions than has hitherto been possessed. In respect to the Sahidic, Armenian, and other ancient versions scarcely more than a beginning has been made.

The monumental work of Tischendorf and Gregory in collecting and classifying the ascertained facts in all parts of the field is now to be supplemented by that of Von Soden and his associates in the preparation of a new critical edition upon a magnificent scale.

Final criticism of the views of Westcott and Hort in respect to the history of the text must, as intimated, await the completion of some of these investigations. Yet in the mean time scholars are not idle in this direction. Few are left to-day either to dispute the correctness of the genealogical theory which Westcott and Hort did so much to state with clearness, or to deny that their contention respecting the Syrian text was substantially correct, save perhaps in imputing to its producers too much of a deliberate intention to create a new text. Respecting the pre-Syrian texts the case is somewhat different. The validity of the distinction between the Neutral and Alexandrian texts has been disputed by more than one scholar of repute, and the precise nature of the relation between these two types of text still remains to be determined with certainty. The progress of knowledge in respect to versions and quotations will, it is to be expected, lead after no long time to a more definite solution of this problem than has hitherto been possible.

But it is in respect to the Western text that there is to-day perhaps the sharpest difference of opinion and the greatest probability of a revision of the Westcott and Hort view. That the Western text is not properly called Western Hort himself recognized; it is now questioned

whether it is properly a text, and does not rather (to use the words of Burkitt) "represent the unrevised and progressively deteriorated state of the text throughout the Christian world in the ante-Nicene age." To the solution of the origin, nature, and value of the so-called Western text, perhaps the most important question now at issue in this field, all those are contributing who are working either in the versions or the quotations or in the study of the facts brought out by the laborers in these fields.

It would be rash to predict what will be the outcome of all the investigations now in progress or waiting to be undertaken. But at present it seems probable that the result will not be so much any considerable revision of the text as a different interpretation of the facts respecting the history of the text, in which is involved also the possible discarding of the name "Western," a new grouping of so-called Western documents, and a new valuation of the testimony of certain combinations of witnesses.

Closely connected with the peculiar variations of the Western type of text in the gospels, especially in the Gospel of Luke and in the Acts, is a problem which arises from the nature of the process by which the synoptic gospels were produced. As the facts in respect to the text of Acts and Luke suggest the possibility of two editions of the same work, each having a claim to be accepted as genuine, so the evidence that the synoptic gospels were not produced each of them independently, and by a single act of individual authorship, but in part at least by compilation and a process of editorship, the precise length and limits of which it is difficult to define, raises the question, What is to be considered the original text? In both cases the problem of textual criticism becomes tangent with, if it does not even merge into, that of historical or literary criticism, and the need arises for the clear definition of the textual critic's task, and of its relation to documentary criticism. Whether the unfavorable verdict which at present scholars seem inclined to pass upon Blass's theory of the double text of Acts and Luke will be confirmed or not, it can scarcely be doubted that the whole problem of the text of the synoptic gospels and Acts calls for investigation by one who is equally at home in the facts and principles of textual criticism and in the synoptic problem.

(2) *The language of the New Testament.* The lexicons of Grimm-Thayer, Cremer, and others, and the grammars, such as those of Buttmann, Blass, and Winer-Schmiedel, are monuments of diligent and successful work already achieved in reference to the New Testament language. Yet the authors of these books would probably be foremost in declaring that this portion of our field abounds in unsolved problems and unaccomplished tasks. The studies of Dalman in relation to the Greek used by New Testament writers, the publication of papyri, in Germany especially by the scholars of Berlin, and in

England by Petrie, Grenfell, and Hunt, and others, and the discussions of Deissman and Moulton, have opened up a wide and most interesting field, at the same time that Cremer's prosecution of his great task and the publication of many notable monographs have pointed the way to a more scientific method of using all available materials. Our problems are of four classes: (*a*) those that pertain to the general history of later Greek, and the place in that history of the Greek used by various New Testament writers, including in particular the question whether we are to cease to speak of New Testament Greek, and cease to write New Testament grammars and lexicons, merging these simply in the works on later Greek; and specifically (*b*) those that deal with the forms of words; (*c*) those that pertain to syntax; (*d*) those that pertain to the meaning of words, lexicography.

These problems may be studied from two points of view: first, from that of the nature of the Semitic influence upon New Testament and contemporary Greek writers; and, second, from that of the relation of the language of the New Testament writers to contemporary Greek, as exhibited not only in the literature of that period, but in inscriptions and papyri.

From the first of these two points of view, it is necessary to distinguish more accurately, if possible, than hitherto between the influences which the New Testament writers brought with them to their task — those Semitic elements which had already become a part of their natural speech — and, on the other hand, those which came through the medium of the sources used by them. Among the influences affecting the current speech, we may distinguish those which came directly from the living Aramaic speech and those which came through the use of the Bible, chiefly from the Septuagint. For however true it is that attention has hitherto been directed too exclusively to the Septuagint as an influence affecting the language of the New Testament, it is not less true that the reaction of the Septuagint upon the Greek written by Jews is an element of the problem that cannot be wholly ignored. Among the influences of the second class we may distinguish those which proceed from the fact that Jesus spoke in Aramaic and those which are due to possible Semitic sources of New Testament books.

On the side of contemporary Greek usage very valuable results may yet be expected both in the study of syntax and in that of lexicography. It would be easy to name many scientific problems, in each of these departments, that await the solution of a competent investigator; in some of these — as, for example, to mention but a single instance, the study of the use of the article in later Greek — the student will have to undertake tasks which might, naturally falling to the share of the classical scholar, have been substantially accom-

plished by him; but in others — for example, in reference to the syntax of the verb — he can wisely build upon the foundation already laid by the classical scholar.

To state in a word the inclusive problem pertaining to the language of the New Testament, what is required is the more complete application of the historical method, and this both in the sense that the basis of historical induction shall be broadened and that the historical point of view shall be more rigidly maintained. He who would write the grammar which New Testament students need, must do it upon the basis of a more thorough knowledge of the results of comparative philology than has usually been possessed hitherto, and must also add a wide knowledge both of Semitic philology and of the usage of later Greek writers, as well as an equipment of psychological insight which will enable him as a true interpreter to discern for what forms of thought those whose language he is studying employed this or that form of word. In the realm of lexicography it is required, not alone that there shall be produced from contemporary and approximately contemporary literature vouchers for the meanings which are ascribed to a word, but that the whole historical development of the usage of the word and of the idea for which it stood, shall be traced, and the word as it is used in New Testament times be seen from the angle of vision from which the New Testament writer, as the heir of this historical development, viewed it. The last quarter of a century has seen steady advance both in the widening of the field of induction to include not simply classical writers, the Septuagint, and the New Testament, but all accessible Jewish literature, and now also the inscriptions and newly discovered papyri, and in the more thorough recognition of the genetic nature of the process by which meanings develop, and the consequent necessity of employing a genetic method in investigation. But much remains to be done, and the field is open and inviting.

(3) *The history of New Testament times.* In the history of New Testament times, so far as it pertains to the record of external events, whether in the Jewish or Græco-Roman world, there is little reason to expect great progress in the immediate future. On the Jewish side, Schürer, Hausrath, Oscar Holtzmann, and others have so thoroughly employed the now available material as to leave little for others to do; and the historians of the Roman Empire may be trusted to furnish to New Testament students all the accessible information in this field. But in the history of thought, the situation is quite different. It would be too much to say that we are here only upon the threshold of our task; the work of the writers already named, and of Charles, Conybeare, Weber, Bousset, and others scarcely less eminent, has carried us well beyond the entrance to the territory. But that much remains to be done in the dating, analyzing, and interpret-

ing the Jewish literature, both Palestinian and non-Palestinian, and yet more in the still more difficult task of coördinating into one historical view results derived from the study of many documents, including Psalms, Apocalypse, Targums, Midrash, and Mishna, none who have even an elementary knowledge of the subject will deny. Whether there are tasks that still await accomplishment in the field of Græco-Roman literature and thought, it does not belong to this essay to say. But the New Testament student is well aware that the successful accomplishment of his task requires a broad and accurate knowledge of the history of the Roman Empire in the early Christian centuries, and that there is still much to be accomplished in the investigation of the question of the extent to which, and the points at which, the thought of the New Testament writers has been affected by Greek ideas concerning God and man and the world and their relations one to another. But here perhaps we are trenching upon another division of our field — the interpretation of New Testament books and the history of New Testament thought.

(4) *Special introduction*, to speak from the point of view which we have assumed and defended, deals with questions pertaining to the origin of those books which constitute the sources for the history of the rise of Christianity. Such a definition of the field raises a question concerning the particular books to be included in it, which was formerly regarded as answered by the limits of the canon. In general, what we seek is the creative period and literature of Christianity, the period of those who not simply received Christianity, but exerted a formative influence upon it, determining in some measure the character of the new religion. Among these Jesus stands preëminent and unique, and because he did not write books, but the record of his life and teachings comes to us in the writings of others, we must include in the scope of our study any and every book which makes a real contribution to our knowledge of his life and teachings. But while Christianity rightly takes its name from Jesus, it would be idle to deny to Paul a place among the makers of Christianity in a secondary but true sense, forward though he himself would be to refuse to stand in any sense upon the plane with Jesus. But Paulinism was not the only formative force, after Jesus, that was active in the formative period of Christianity, and to the sources for the life and teachings of Jesus, and those that give us like information concerning Paul, we have to add such other books as the Apocalypse, the epistle to the Hebrews, and some at least of the catholic epistles which illuminate for us the early days of our religion. The boundary to be drawn is not a strictly chronological one, as if the creative literature of the character of which we are speaking necessarily ceased to be produced as soon as that of a more secondary character was produced. But we shall probably not be far from right if we

define the period of which we are to construct the history as extending approximately to the end of the first century, and the literature to be examined as all that which makes a real contribution to our knowledge of the Christianity of the first century.

But the modern definition of the function of New Testament scholarship compels also a revised definition of the question which is to be answered concerning these books. Formerly the question of genuineness occupied the centre of the stage and was thought of as almost synonymous with the question of the right of the book to a place in the New Testament. To-day the question that introduction asks is not, Has the book a right to a place in the New Testament? but, on the one side, What information can we gain concerning the origin of this book, its authorship, occasion, and purpose, in the light of which its real meaning may be discovered? and, on the other, To what period and stage of the history of Christianity does the book itself belong, and what is the value of its assertions in the realm of historic fact? Introduction is thus purely an historical discipline, both in itself and in the end that it serves. The questions that it asks are questions of historic fact; the problems to the solution of which its answers contribute are wholly historical. The question of genuineness becomes simply the question of authorship and date, important because on its decision depends in some measure the interpretation of the book, but more especially either because by the answer to it we are able to place the book and its contribution in its proper historic position, or because the decision helps us to give the right value to its statements of fact.

The field is so broad that clearness of exposition requires its subdivision into parts. We may speak separately of —

(*a*) The letters ascribed to Paul.

(*b*) The synoptic gospels and the Acts.

(*c*) The Fourth Gospel and the Johannine letters.

(*d*) The Apocalypse.

(*e*) Hebrews and the epistles of James, Peter, and Jude.

The letters ascribed to Paul. In respect to the Pauline letters there meets us at the very outset the question whether it is incumbent upon us to vindicate our right to use the term "Pauline letters" at all, as against those who would permit us to speak only of pseudo-Pauline epistles dating from the second century. The era of New Testament criticism that began with Ferdinand Christian Baur has been distinguished, not simply by the recognition of certain letters of Paul as genuine, but even more fundamentally by the perception of the fact that the student of the New Testament is a student, not simply of literature, but of history, and by the attempt on the basis of literature, properly dated and placed, to write the history of the origin of Christianity. Is that era past? Have we now to become,

as previous to the nineteenth century biblical scholars as a rule were, students of literature rather than historians, and are we to confess that of the origins of Christianity we have, at least in the Pauline letters, no authentic monuments? Are we no longer in the age of Baur, but in that of Loman and Van Manen? The question, if it requires consideration at all as one of the living problems of New Testament study, is one of very serious import. For if it is true that the rightfulness or wrongfulness of Van Manen's position is for scholarship an open question, then it must be answered before we can even ask any others in respect to the Pauline literature, not to say the apostolic age. It is now more than twenty years since these views were first presented to scholars in articles published in the *Theologisch Tijdschrift*, and sixteen years since they were presented at length and in easily accessible form in Steck's *Galaterbrief*. Elaborate refutation, it must be admitted, they have not received. As certainly have they not gained any general or enthusiastic approval. Nothing comparable to that which ensued upon the publication of Baur's *Paulus* has happened in the scholarly world in respect to the writings of Loman, Völter, Steck, and Van Manen. Is it because New Testament scholarship is staggered, silenced, consciously put to rout? Even Van Manen, who complains of the neglect with which these views have been received, does not venture to affirm that this is the explanation of it. No; it must be admitted that the comparative silence of scholars means, not that there is nothing that could be said in reply, but that in their judgment little need be said. Van Manen's plea for attention may perhaps call forth — ought perhaps to call forth — a presentation of the reasons why New Testament scholars believe that Paul wrote some at least of the letters which have come down to us bearing his name, at once more substantial than has hitherto been put forth and more worthy of the importance of the subject. But unless New Testament scholarship shall experience a very decided change of mind, it will not take this up as a vital question, the answer to which is in such sense in doubt that, pending the solution of it, all other work upon the life and teaching of Paul must be held in suspense; but rather as a buttressing of foundations whose strength has already been fully established.

If, then, we are right in believing that in the field of the criticism of the Pauline letters we are still in the epoch that dates from 1831, not from 1882, then we possess in Galatians, Corinthians, and Romans a basis of knowledge respecting the life of the apostle Paul, and a firm basis of judgment respecting his type of mind, his literary style, and his theological position. There remain, no doubt, important problems affecting these letters : respecting Galatians, the location of the churches addressed and a considerable group of minor problems associated with this one; respecting Second Corinthians, the

question whether this is really one letter or a collection of parts of several letters moulded into the form of a single letter, not by the writer himself, but by a considerably later editor or scribe; respecting Romans, the question of its integrity, especially as pertains to the fifteenth and sixteenth chapters. But however these problems may eventually be solved, we are still in possession of that most important advantage in any field of study — a foundation on which to build, a base-line from which to triangulate the region of greater or less uncertainty.

But in so stating the matter we understate the positive element of the situation. For as is well known, it has gradually come to be recognized that the kind of evidence which establishes the genuineness of Galatians, First and Second Corinthians, and Romans exists also in the case of First Thessalonians, Philippians, and Philemon. The present attitude of scholarship is represented, not by the phrase "the four undisputed letters of Paul," but rather by the expression "the generally accepted letters of Paul." That there is entire unanimity on this point, even among those who reject Van Manen's position, is not here affirmed. There are problems still to be solved respecting First Thessalonians, Philippians, and Philemon, even as there are in respect to Galatians, Corinthians, and Romans. But the question of their genuineness can no longer be counted among the acute problems of New Testament study.

Respecting Second Thessalonians, Colossians, and Ephesians, the situation is somewhat different. The trend of opinion is very strongly toward the acceptance of Colossians, in the main at least, as a real letter of the apostle himself, any differences of point of view between it and the other letters reflecting the progress of the apostle's own thinking under the influence of contact with different types of thought in the Græco-Roman world, rather than the thought of a period subsequent to that of the life of Paul. That Ephesians is not in the strictest sense a letter, but a sermon or theological essay, cast somewhat in the form of a literary epistle, and that only as such can it be regarded as a genuine letter of Paul, is now generally admitted. The apostle cannot have written such a letter specifically to the Ephesian church. The impersonality of its tone can be accounted for only by recognizing its semi-literary character. The view that the author intended it to pass as a letter of the apostle to Ephesus involves the consequence that authorship and destination are both a literary fiction. The question, therefore, is: Which is more probable, that the apostle put forth a similar letter intended for the reading of a group of churches, following the same general lines of thought which the situation in Colossae had led him to adopt in writing to the church in that place, or that a Christian of the post-apostolic age availed himself of the epistle to the Colossians to build

up on the basis of it a pseudonymous letter which he represented as addressed to the Ephesians? The trend of judgment seems to be toward the former view, but the question is still treated by New Testament scholarship as a fairly open one, and must be classed among the problems.

The objection to the acceptance of Second Thessalonians as Paul's on the ground that the eschatological views embodied in its apocalyptic section are inconsistent with those expressed in First Thessalonians is accorded less weight than formerly, and there are probably few who would favor the solution of the problem, advocated, for example, by Schmidt, which treats the apocalyptic section as an interpolation. The similarity of the epistle in much of its content to First Thessalonians, though there must of necessity have been a considerable interval between them, is a phenomenon that doubtless requires explanation; but it must be doubted whether it is not easier to account for this than for the creation, with no clearly evident motive, of an epistle so closely resembling Paul's in general tone and style, yet proceeding in fact from another and considerably later hand. Further investigation of the thought of the apostolic and post-apostolic age, or the discovery of more delicate psychological tests by which to weigh the probability of an author repeating himself after an interval of some weeks, may be necessary before the question can be transferred from the class of the open to that of the closed.

The problem of the pastoral epistles attracted serious attention some years before the criticism of Baur dealt with the Pauline epistles as a whole. As early as Schleiermacher, the Pauline authorship of First Timothy was disputed, and others soon extended the doubt to Titus and Second Timothy. Nor could this have failed to be the case as soon as the New Testament was dealt with in the critical spirit. The differences between these letters and the letters generally accepted as Paul's, in vocabulary, style, and the reflected condition of the churches, as well as the difficulty of finding a place for them in the life of Paul, as this is known to us from the Acts or from the accepted letters, combine to present a problem which could not but raise the question whether these letters really belong to the lifetime of the apostle, or are not rather to be assigned to a considerably later period. The question formerly argued as a simple alternative, genuine or not genuine, has of late taken the form of a choice among these possibilities: wholly Pauline, partly Pauline, wholly post-Pauline. To many scholars it has become almost an axiom that these letters are, at any rate, not wholly Pauline. But it is recognized with greater clearness than formerly that to point out difficulties, even serious or seemingly insuperable difficulties, in the way of ascribing the letters to the apostle, is not to solve the whole problem; the task of the historian is to say, not only when

the letters could not have been written, but when they were written. And the attempt to find for them — or for the non-Pauline portions of them, if they be recognized as of composite character — a location subsequent to Paul's death, to which they fit themselves more perfectly than to any point in his life, lacks something as yet of perfect success. On the whole, the unity or composite character of these letters, the period from which they come or the periods from which their component elements arose, the situation in the apostle's life which they or their Pauline elements reflect, or the situation which the later author sought to meet and affect by them — these must still be accounted as problems, on which, indeed, many scholars have made up their minds, but which to New Testament scholarship as such are still problems for future investigation.

The synoptic gospels. It might seem that the diligent labor which since the days of Schleiermacher, Eichhorn, and Gieseler has been bestowed upon the problem of the origin of the synoptic gospels, in which is included, of course, that of their relation to one another, would before this have sufficed, not only to propose every possible hypothesis, but also to reach a definite solution through the elimination of those that are inadequate. It is true that the field of debate and possible difference of opinion has, in the judgment of most scholars, been very greatly narrowed. That the gospels are interrelated, not simply independent narratives of events in part the same is universally confessed. That the relation between them is mediated in part, and indeed mainly, by written documents, is the judgment of the great majority of those who have studied the problem at first hand. That Mark, or a document nearly identical with it, was a chief source of the first and third gospels, and that these two gospels had also another common source, is almost as generally held. But the demonstration of these propositions, granting them to be demonstrated, falls far short of a complete solution of the problem. The predication of a common source of Matthew and Luke additional to the Mark source but inadequately accounts for the facts. There is much in the peculiar relation of the non-Marcan elements as found respectively in Matthew and Luke to indicate that, even aside from the infancy narratives, and other portions of these gospels that may perhaps be treated as fragmentary, the non-Marcan source of Matthew and Luke is resolvable into distinguishable elements, which call for enumeration and identification. Nor is this probably the end of the scholar's task in this direction. For there are facts that suggest at least the possibility that when the sources immediately employed in common by Matthew and Luke, or by either of them alone, have been enumerated, these documents themselves will call for analysis into the elements from which they were derived. The preponderance in threefold material of the agreements of Mark and Luke against

Matthew, and of Mark and Matthew against Luke, over those of Matthew and Luke against Mark, has long been recognized, and its cardinal importance for the synoptic problem has been perceived. But this preponderance of the two kinds of agreement over the third does not annihilate the third class of agreements, or justify the ignoring of them. This has, indeed, been clearly recognized, especially of late years, nor have there been lacking proposals by which this third class might be accounted for. Yet it must be confessed that this unexplained remainder still awaits a satisfactory solution, and that in it lurks the possibility of a discovery which may yet greatly modify the now generally accepted theories.

That this problem probably lies, as has already been suggested, partly in the realm of textual criticism, and that its solution will perhaps come through a clearer recognition than has been usual of the existence, in respect to the synoptic gospels at least, of a frontier where textual and documentary criticism meet and merge, points to the necessity that the study of the details of the synoptic problem be supplemented by an investigation of the principles in accordance with which such problems are to be solved. It is a fair question whether further progress in this field of inquiry would not be most facilitated by a clear exposition of the canons in accordance with which it is necessary to proceed in the process of discovering the nature of the relation between documents, between which there is evidently a relation of some kind.

Of the problems pertaining to the synoptic gospels, other than that of their origin and relation to one another, such as their date and the specific purpose of each, it is not needful to speak at length. In so far as fairly definite results have not already been reached, the solution of them is likely to be involved in that of the main question of the origin and mutual relation of these gospels.

The book of Acts. Peculiar interest must always attach to the book of Acts as the one work, dating from the early age of the church and having any plausible claim to trustworthiness, that gives a connected narrative of events in the apostolic age. Inferior as an authority to the strictly first-hand testimony of the Pauline letters, it possesses, by virtue of the systematic scheme of events which it furnishes, a value which even the Pauline letters lack. This unique position of the book among the sources for the rise of Christianity gives a peculiar importance to the problem of its authorship, sources, and date. That it employed sources, that these were of unequal value, and that among these the "we-document" is of first-class authority, quite equal in its way to the Pauline letters, are among the assured results of criticism. But how much the we-document included, whether the author of the we-source is also the compiler of the whole work, what the other sources were, of what value they are, when the

book was written and with what purpose — all these questions are still in litigation. Progress toward a final solution of them can be made only by the slow process of even more careful exegesis, more exhaustive and minute archæological research, and even more critical weighing of evidence and sifting of hypotheses. Fortunately, in all these lines progress is making, and it is not unreasonable to hope both for new light from archæological discovery and for progress toward assured results. As in the case of the gospels, so here also the solution of the problem will contribute to the elucidation, not only of the period covered by the narrative of the book, but also of that in which the book arose.

The Fourth Gospel. If the synoptic problem must still be included among those that are only partially solved, this is still more emphatically true of the problem of the Fourth Gospel. Once and again in the last half-century affirmed to be now at length finally settled, sometimes by those who have reaffirmed its strict apostolic authorship, sometimes by those who have reduced to a minimum its connection with the circle of Jesus' disciples, it persists in reappearing among the most difficult and perplexing of all the problems presented to us by the New Testament. For a time indeed there seemed to be an increasingly general recognition that the truth of the matter lies at neither extreme: neither with those who would make the book the naïve record of the aged John's recollection of Jesus, nor with those who would assign it to the latter half of the second century and deny it all connection with the immediate followers of Jesus and to its author all knowledge of his subject. But of late a reaction has set in, and to-day the most diverse opinions are expressed by men who have no reason for disagreeing other than their inability to interpret the facts alike.

The difficulty of the problem, which is so complex that its elements cannot even be enumerated here, lies largely in the apparently contrary indications of the evidence. Beneath the surface of a smooth and uniform style there lie, on the one side, strong indications of Jewish authorship and Palestinian origin, and, according at least to their *prima facie* meaning, both internal evidence and direct assertion of close association of the author with Jesus; yet, on the other hand, such divergences from the testimony of the synoptic gospels, not only as respects the chronology of Jesus' ministry and the place of his work, but also as to the manner and substance of his teaching, and such a reflection of the influence of philosophical thought not otherwise associated with Palestine, as suggest an author of quite different characteristics from those which we naturally attribute to John the son of Zebedee. The external evidence is not less perplexing. If, on the one hand, the testimony of Irenæus concerning what he learned from Polycarp, together with his undoubted acceptance

of the fourth gospel as from John the son of Zebedee, seem to establish an unbroken chain of ancient testimony to the Ephesian residence of John and his authorship of the Gospel; on the other, we are compelled to recognize that the silence of the Fathers of the first half of the second century, and especially of those who belonged to Asia Minor, the perplexing character of the testimony of Papias concerning two disciples of Jesus both bearing the name of John, and the great difficulty of accepting as conclusive the testimony of men who ascribe to the same author both the Apocalypse and the Gospel, create a situation which is by no means clear or easy of interpretation. The question is one in which sentiment and a prejudice not to be wondered at, hardly to be condemned, enter in to complicate a problem difficult enough in itself. The church will not readily consent to surrender the apostolic authorship of that Gospel which has ever been to very many the most precious of the four. Yet it cannot be doubted that in the end a solution will be found which will do justice to all the evidence, and that this view will find general acceptance among scholars, whatever their previous prejudices or predilections.

The problem of the Johannine epistles is inseparably connected with that of the Gospel. For the similarity of style and spirit is so great as to compel the ascription of them to the same period and group of writers; probably, indeed, to the same author.

The Apocalypse. Perhaps in respect to no other book of the New Testament has so rapid and real progress been made in recent years toward the obtaining of the key to the understanding of it as in respect to the Apocalypse. The value of the historical method is here conspicuously evident. That the book belongs to that series of apocalypses of which the first and adjacent centuries produced so many, and the several numbers of which were not so much successive, independent works, together constituting a class of literature, as successive portions of a stream from which each author in turn drew and into which he poured his contribution — this now generally recognized fact is fundamental for the understanding of the book, and determinative for the method of its interpretation. It deals the deathblow to all those schemes of interpretation which are controlled by the assumption that the key to the meaning of the prediction in the book is to be found in what in the first century or subsequently actually took place in fulfillment of these predictions. Add to this recognition of the apocalyptic character of the book, and its consequent relationship to other apocalypses, that other fact, which by no means contradicts or detracts from the first one, namely, that the book had its place and its function in the life and experience of the early church, and was in this way related to the period in which it arose; and the further fact that its date is fixed with approximate certainty for the last decade of the first century, and a long step has been taken

toward such an understanding of the book as will make it a most important source for the history of the early days of Christianity. That much remains to be done in determining with greater definiteness the influences under which the writer worked, the sources from which he drew, the extent of his own contributions, and the ends that he sought to achieve, cannot obscure the fact that now at length the New Testament student is in a position to make substantial progress in his task of understanding this book, and of deriving from it its contribution to the story of the rise of Christianity.

The epistle to the Hebrews. Of the many questions which the epistle to the Hebrews raises, several may safely be reckoned as no longer in the category of the unanswered. That the letter was written, not by Paul, but by a Christian who on the one side shared in general the Alexandrian-Jewish view of the Old Testament, and on the other side held, though with much independence of thought, substantially the Pauline conception of Christianity; that it is a letter, not simply an essay under the mask of a letter; and that the danger to which its readers were exposed was not that of a return to Judaism, but of apostasy from Christianity in the direction of irreligion and worldliness — these may be considered as established propositions.

The search for the identity of the author is certainly one of legitimate curiosity. But in view of the negative results so far achieved, and the apparent impossibility of connecting the book with any one the connection with whom would facilitate the understanding of the letter itself, it can scarcely be reckoned as other than one of curiosity. That which is at the same time practicable and necessary for the interpretation of the book is the definition of the writer's intellectual and religious position, and this must be accomplished through the study of the book itself. To such a knowledge of the author it is scarcely less important to add the determination of the position of the reader. And here it is of importance, first, for the understanding of the letter to define the intellectual and moral status of the community addressed; and, second, for the most effective use of the results of interpretation in the construction of the history of early Christianity, to locate the community geographically and the writing of the letter chronologically. These are to-day the open questions respecting the epistle to the Hebrews. Strong as is the tendency to displace the older view that the readers were Jewish Christians with the judgment that they were gentiles, or that they were, in the view of the writer, neither Jews nor gentiles, but simply Christians, the newer view can hardly be said fully to have established itself or completely to have explained the strong indications that the writer had in mind chiefly men who like himself had grown up under Jewish influence. If Jerusalem has been abandoned as the home of those addressed, and if the strong preponderance of opinion is toward

Rome, this also awaits more perfect substantiation; and if Rome be accepted as the home of the readers, it is still to be decided whether the letter was intended for the whole Christian community in the city to which it was sent, or to a smaller group of Christians. It is evident that all these questions have an important bearing on the contribution which this letter makes to our knowledge of early Christianity, since on the decision of them turns in part our knowledge of the extent to which, the region in which, and the time at which the special type of Christian thought reflected in this letter was prevalent.

First Peter. The authorship and date of the epistle known as First Peter must also be reckoned as among the open problems of New Testament study. The excellent character of the Greek, the distinctly Pauline character of the doctrine, the clear literary dependence upon Romans and Ephesians, and the destination of the letter to Pauline churches are serious problems for those who would accept the claim of the letter itself to be from the hand of Peter. Yet an explanation of all these things may be found in the relation of Sylvanus to the writing of the letter, if only it be also admitted as possible that Peter may in the latter years of his life have coöperated with Paul, or have taken up the work that Paul had laid down, and that in this period he came to hold substantially Paul's conception of Christianity and was capable of writing under the dominating, even if temporary, influence of Paul's own writings.[1] To many indeed such a confessedly complicated, and in part conjectural, hypothesis is less probable than the simpler, though not less hypothetical, view that the letter was written long after Peter's death by a Pauline Christian who deliberately assumed the name of Peter to give greater weight to his writing. The problem must still be counted among the unsolved. Were the Petrine authorship established, and its date definitely fixed, the letter would make a most significant contribution to the history of the apostolic age.

Respecting the remaining books of the New Testament canon a very few words must suffice. That there is to-day so wide difference of opinion as still exists concerning the place of James in the early history of Christianity is a testimony possibly to the perversity of men's minds, but even more to the difficulty of the problem which may be presented by a brief book of almost purely ethical and didactic character. Such books may be written in almost any age. Respecting Jude and Second Peter the case is different. The evidences of late date are such as almost to exclude them from among the sources for the history of the rise of Christianity.

But if there are in the New Testament canon books which are

[1] Despite the weight of B. Weiss's name and opinion, we need scarcely reckon seriously with the view that First Peter is earlier than the Pauline letters to which it shows relationship.

so late as perhaps to fall outside the scope of the historian of the origin of Christianity, are there outside the canon books which are of so early date and of such character as to demand consideration as possible sources for the history of the rise of Christianity, and so inclusion in the scope of New Testament introduction in the sense which we have given to it? To answer this question definitely and specifically would carry us beyond the proper limits of this paper. It must suffice to answer that, as the historians of the life of Jesus are recognizing that they must consider the possible value for their science of the gospel according to the Hebrews, the Oxyrynchus logia, and any material of like character which may be discovered, so introduction, if it be in fact the preliminary study of the literature which is available for the history of the rise of Christianity, must in like manner consider all literature having a *prima facie* claim to be included among such sources, and include all that can substantiate such claim.

II. *Literary Interpretation of New Testament Books*

The discovery of the meaning of the individual books of the New Testament, once the culmination of New Testament study and almost its only clearly defined task, must now be looked upon as a means to the still higher task of constructing the history of the origin of Christianity. Yet it retains a place of eminence, and may properly be designated as the central division of the whole field. For covering the whole New Testament literature, all the subjects heretofore discussed prepare the way for it, and, on the other hand, on the results of the work of interpretation must be built all subsequent achievement in historical construction. It is, so to speak, the reservoir into which all the preparatory studies pour their results and from which must be drawn the material for the constructive historical work.

The problems of this central division of the field are too numerous even to catalogue. There is not a book of the New Testament collection that does not present questions of interpretation, which, despite all the work of centuries, still call for further study. Progress in the solution of these problems will come partly through the more perfect performance of the preparatory tasks, partly through a clearer conception of the nature of the interpretative process itself. A more perfect exegesis demands a more perfect lexicography, a more perfect grammar, and, most of all, perhaps, a more perfect knowledge of the thought of New Testament times both in the Jewish and non-Jewish world, and a setting of the books in the bright light of such knowledge. The effect of achievement in this direction will be twofold: first, it will enable us to see with greater clearness the thoughts which the New Testament writers meant to express; and, second, it will help

us to perceive the relative value which they themselves put upon their various ideas. It is at this point perhaps that the nature of the interpretative process calls for more accurate definition than it has generally received. For however common it may have been in the past to assume that all a writer's thoughts are for him, and so must be for the interpreter, upon one unbroken level, this is certainly an error. Interpretation has for its task the recovery of the whole state of mind of the author of which the passage or book under consideration is the expression. But just as surely as men have different thoughts, so surely do they themselves value their various thoughts variously. One idea is simply an inheritance from the past, which a man holds without repugnance, but without enthusiasm. Another is a current notion that he will use to-day for illustration, and to-morrow discard for its opposite. A third is the central, vitalizing element of all his thinking, that by which he lives and for which he would be willing to die. The interpreter who recognizes the full breadth and depth of his task will see that it is just as much his duty to discover the relative values which the author puts upon his thoughts as to find out his thoughts themselves. Knowledge of the thought of the time will help to solve the question of genesis; and knowledge of genesis will help to the discovery of value. But genesis and value are not necessarily correlative. What is inherited from the past is often, and often rightly, precisely that which is held most tenaciously. The problem of value is often a complex one, but it is none the less a necessary one. That interpreters are already beginning to give practical recognition to this important phase of their task — asking, for example, not simply what ideas Paul expresses in his various epistles, but what was the source and genesis of these ideas, and how they were related to one another; which are vital and central, which peripheral and illustrative — is an encouraging mark of progress. The principle, we must believe, is destined to be yet more fully recognized, to be more exactly defined, and to become more influential, not only in the constructive historical work, but in exegesis proper.

III. *New Testament History*

We come at length to consider that division of New Testament study in which, as already indicated, it culminates: New Testament history, or, more accurately stated, the history of the rise of Christianity, including both the history of events and the history of thought. The definition of the field as that of the rise of Christianity, rather than as that for which the books of the New Testament furnish the material, has already been defended. The inclusion of events and teachings in one general division follows almost as a matter of

necessity from the recognition of the problem of the New Testament as essentially historical.

The division of the field into that of New Testament theology and New Testament history, the latter dealing specially with the life of Christ and the life of Paul, while doubtless possessing some practical advantages, is open to serious objection, if it be considered as anything more than a division of convenience, and even thus can scarcely escape separating things that are intimately related. That is really the more scientific method of treatment which is adopted in such works as Weizsacker's *Das apostolische Zeitalter* and Pfleiderer's *Urchristentum*, but which has been less commonly and less thoroughly applied in the case of the life and teaching of Jesus. For, in fact, neither Jesus nor Paul nor any of the founders of Christianity were philosophers of the closet, who, dwelling in isolation, wrestled in solitude with the problems of ultimate being, but men of action whose doing and thinking were inseparably knit together; and neither can the teaching of Jesus be adequately understood in separation from the life, nor the doctrine of Paul in isolation from his whole experience.

Nor can the division of the field be justified from the point of view of the end sought. While New Testament thought, whether that of Jesus, Paul, Peter, John, or Jude, was viewed as normative, New Testament theology was naturally enough distinct from New Testament biography and history, and scarcely distinguishable in theory from Christian theology. The adoption of the historic point of view has compelled the recognition of the necessity for distinguishing the teachings of the various New Testament teachers and writers; it must in the end lead to the recognition of the essential unity of the historical problem, and bring all phases of it under the one category of the history of the rise of Christianity. If, as is doubtless the case, divisions of the field must be recognized for the sake of practical convenience, the lines of division will be drawn, not between deeds and words, but between the lives of individuals or between successive periods. The chief line of division will then necessarily fall between the life of Jesus and the apostolic age.

The life of Jesus. If we assume that New Testament introduction has already determined for us the sources of the life of Jesus, and that interpretation has given to us in detail the meaning of those sources, the problem of the life of Jesus is to reproduce as fully as those sources make possible the historic person, Jesus, in a true historic setting and with a true representation of his character, deeds, and teachings. Of the many specific problems which are involved in the one, it must suffice to name a very few of the most important questions which confront the New Testament historian to-day.

And first of all let there be named one which enters as an element

into every other great problem that we might name. I mean, the historicity of the sources. The interpreter pure and simple may ask for the Jesus of the gospels or of a single gospel; the historian must seek the Jesus of historic fact. However congenial to Christian feeling it may be to assume that the two are identical, the New Testament historian cannot make that assumption. New Testament introduction by its classification of the sources and discovery of their relation to one another compels the recognition of the unequal value of different parts of the record. But the work which it thus begins it only begins. It furnishes certain criteria for the solution of the question of historicity, but cannot of itself solve all such questions. Statements of a clearly derivative character are, indeed, thereby discredited. But that an assertion is made in a late document does not prove it false. And while the presence of a statement in the oldest sources creates a presumption in its favor which is to be overthrown only by strong evidence, yet the possibility of error even in an original source cannot be *a priori* denied. And not only so, but the historian cannot ignore the fact that the original sources of the gospel narrative are, in part at least, original only in the sense that they are the original written form of a narrative which had been transmitted orally for a period of some years. Nor can he forget that even an eye-witness can only, strictly speaking, testify to his experience, yet as a rule must of necessity throw that testimony into the form of an interpretation of his experience, expressed in terms of objective fact.

All these considerations, which pertain to the records of the life of Jesus in general, and yet others, demand to be taken into account when the historian confronts the difficult question of the historicity of the miraculous in the gospel narrative. That there were even in the life of Jesus miracles in the sense of events which lay outside the realm of law, the products of extra-legal, unprincipled divine action — to admit this is for the historian so difficult to-day, in the face of his knowledge of history, that he is compelled at least to scrutinize with extreme care the apparent evidence of such events. On the other hand, that Jesus wrought miracles in the sense at least in which, as testified by Paul, Christians of the apostolic age wrought them, is attested by evidence too strong to be set aside. That there were in the life of Jesus miracles which transcended the limits of anything that happened in the apostolic age or has happened since, it would be rash to deny. For the unparalleled is not of necessity extra-legal or unhistorical. But that the gospels contain narratives which, on the one hand, so far transcend human experience as otherwise historically known, and, on the other hand, are so lacking in the support of the oldest and most trustworthy sources, or so amenable to amendment on the basis of the distinction between the experience

of the observer and his interpretation of that experience, as to forbid the historian to give to them unqualified acceptance, must be admitted. No other problem of the New Testament historian more imperatively demands sober judgment and careful weighing of evidence than this determination of the class to which each of the apparently miraculous events recorded in the gospels really belongs.

A second great problem of the life of Jesus pertains to the recovery of his teachings. As already indicated, the problem of historicity confronts us here also. If there is little room for doubt concerning his fundamental ethical teachings, or concerning his conception of religion so far as it concerns the relation of men to the heavenly Father, or concerning his claim of authority as a moral teacher and as a moral leader, yet the problem ceases to be simple when it is asked what was his attitude toward the messianic idea, what he said concerning his own nature, and what was his expectation concerning the future of himself, his disciples, and the nations of the world. Criticism and interpretation become intimately interlaced, and questions of detail not simply contribute to, but wait upon, the solution of larger problems, such, for example, as the intellectual characteristics and horizon of Jesus.

The question of the eschatology of Jesus is to-day in the forefront of discussion. Do the gospels, when their testimony has run the gauntlet of a just and discriminating criticism, and when that testimony has been set in the light of full knowledge of the apocalyptic ideas of the time, give us the evidence that Jesus shared the apocalyptic conceptions and expectations of his day, fitted his own estimate of himself and of his mission into the framework of those expectations, and looked for his own speedy return after death to inaugurate in Palestine a reign of the righteous both living and risen from the dead; and was this what he meant when he spoke of the kingdom of God as nigh at hand? Or when we view the testimony of the gospels in the light of the process by which those gospels arose, and of the unquestioned tendency to interpret Jesus' words by the conception of the future held by Jew and Christian alike (though not indeed in identical form), and in the light of the sanity and thorough independence of the thought of his contemporaries that are so preëminently characteristic of Jesus, does it become more probable that the church has in its report of Jesus' teaching unintentionally confused the thought of Jesus concerning the coming of the kingdom of God with his thought concerning the coming of the Messiah, and unwittingly assimilated the memory of his teachings to its own expectations and hopes, than that Jesus, in other things so independent in his thought, and so endowed with spiritual insight and discernment, was in this matter caught in the stream of apocalypticism and assimilated his thought to that of his age? The question is

one of far-reaching significance for our estimate of Jesus. If the trend of scholarly opinion at this hour seems almost wholly in one direction, it is still to be recognized that the discussion is not yet closed, and the final verdict may perhaps be different from that of this hour.

A third great problem concerns the narratives of the resurrection. That behind these narratives, including the testimony of the apostle Paul, there were veritable experiences of the early Christians; that those experiences had a mighty influence in the production of the early Christian church; and that they kept alive, if they did not create, that faith which is at the very heart of Christianity, it is impossible to deny. But that the narratives present peculiar difficulties to the interpreter and the historian, that the experiences are themselves of a character to call for the most careful discrimination between the interpretation which the witnesses themselves put upon them and the objective facts that gave rise to the experience, and that to a record of veritable experiences there may have been added narratives of inferior historical character — these things also it would be rash to deny. The truth that is at the heart of the resurrection narratives and of the faith of the early church in the resurrection, Christianity will never willingly surrender. But neither will it cease its inquiry into these records until it has determined with all possible exactness what actually happened in the experience of the disciples and at the tomb of Joseph.

Of other problems that pertain to the life of Jesus, partly to his teachings, partly to more external matters, a bare catalogue of some of the most important must suffice. Such are the parentage of Jesus and the historicity of the narratives of the infancy, the question whether he possessed a consciousness of preëxistence, the time and length of his ministry, and his relation to the baptism and the Lord's supper which we find as established usages of the apostolic church.

But all these are of minor consequence, save as they contribute to the solution of that central and most vital problem of the life of Jesus, and indeed of all New Testament study, What is the significance of Jesus for religion? What is his place in human history? That this cannot be solved by lexicography and grammar, exegesis and documentary criticism, does not exclude it from the province of the New Testament student, but only emphasizes the largeness of his task. It is the goal toward which all study of the gospels must move, the hope of its attainment is the inspiration under which it labors.

The apostolic age naturally falls into three parts, or is viewed from three points of view: primitive Christianity, the work of Paul, the Christianity of the later apostolic age. That Paul was the most potent single personality in the apostolic age can be doubted only by supposing that the extant records do not exhibit the facts in

anything like their just proportion. This, however, but makes it the more important to obtain the clearest possible picture of Christianity as it was before Paul became a factor in the situation. Yet of literature from this period there is none, if the early date of James be denied, and we are therefore thrown back chiefly upon the testimony of the early chapters of Acts and the indirect evidence of the epistles of Paul. On the basis of a critical examination of this evidence, New Testament scholarship has to frame for itself as accurate a representation as possible of the company of Jesus' disciples, their faith, their hopes, their relation to one another, their thought about Jesus, especially concerning his death and resurrection, their relation to their fellow Jews, the steps by which they became more and more differentiated as a religious community from them, and the outward expressions of their religious life in organization, worship, and ritual.

In the life and work of Paul New Testament scholarship finds a problem surpassed in interest and importance only by that which is presented by the life of Jesus. The end to be achieved is the discovery of the significance of that life as a reflection of, and a contribution to, Christianity in its plastic and formative period. The problem is psychological and biographical in its content, historical in its aim. It is a study of the experience of a man for the purpose of understanding a great historic movement. It can be solved only by a genetic study, which, taking full account of the environment, Greek, Jewish, and Christian, shall trace the course of Paul's experience, his intellectual and religious life, from his youth on through the days of his pharisaic zeal and of his career as a Christian apostle to its end. The recognition of the genetic character of the problem is not new. Weizsäcker, Holsten, Feine, and Pfleiderer have all dealt with it from this point of view. Nor is it possible to enlarge the list of the factors which were influential in making Paul what he was: Old Testament history and literature; Pharisaic Judaism; primitive Christianity and its report of Jesus and his teaching; Paul's own personal experience, especially the vision of Jesus as raised from the dead; and Hellenism, especially in its Alexandrian Jewish development. But the task of relating all these to one another, and of discovering how they acted and interacted in the mind and life of Paul, still calls for further study. Especially do we desiderate a clear perception of the significance which Paul attached to the death of Jesus, and of the sources and nature of his thought about the preexistence of Jesus. Not less do we need that which has already been spoken of as necessary in connection with the problems of literary interpretation, — a clearer perception of the values which Paul himself attached to the several sources from which he drew his thought and to the several elements of his thought itself. Was

the Old Testament, or Hellenism, or the transmitted teaching of Jesus, or his own personal experience, the ultimately controlling factor in his conception of what constituted the gospel? Or if to no one of them can be attributed the place of imperator, how did they relate themselves in his thought? Is it possible to define more exactly than has yet been done the precise attitude of Paul to the Old Testament, to which he apparently ascribed authority in some sense, yet whose teachings on some matters he unhesitatingly and emphatically set aside? To a relative ranking of the sources from which he derived his opinions and convictions did there correspond a relative ranking of these opinions and convictions themselves? That Paul was a man of intense convictions there can be no manner of doubt. Did it result from this that all his opinions were convictions held with equal intensity and assurance; or is it rather true that the few central convictions that he held entered freely into combination, which might almost be described as chemical, with every phase of thought with which he came into contact, appropriating and converting to their own use whatever lent itself to such conversion, rejecting and consuming whatever threatened itself to destroy those governing ideas of the apostle? Is the gospel of Paul essentially and centrally eschatological? Is reëmbodiment as an element of the future blessedness of the believer vital to his thought, or the product of his gospel combined with the Palestinian Jewish anthropology? Is the Christology of the later Pauline letters the late emergence of an element held as vital and central from the beginning of his Christian thinking, or the late unfolding of what was latent in his primary thought, or the product of his primal conception of Jesus and contact with a type of thought with which he came into influential touch only in the latter part of his career? All these questions are but phases of the search for the real Paul, the effort to present him to ourselves not simply in a list of his deeds and a catalogue of his doctrines, but in the true perspective of his life and the emphasis of his thought; and this again to the end that we may more perfectly apprehend the history of the origin of Christianity.

The problems of the later apostolic age are, as already indicated, complicated by questions of the authorship and date of the writings that constitute the sources for the period, and which are either confessedly of uncertain date and authorship, or are the subject of great difference of opinion on these points. That Christianity is in this period struggling to adjust itself to its environment, not by surrender, but by conquest, and this both in respect to Judaism and Hellenism, and at the same time to solidify the foundation on which it rests its faith — this is fairly clear. But possessing neither a connected narrative of events nor the clear presentation of any commanding

personality to guide it, scholarship still struggles with but imperfect success to reconstruct the story of Christianity in this later period. What were the experiences of the Jewish Christian communities, with their predilection for pharisaic legalism and apocalyptic messianism, and confronted by the downfall of the Jewish temple and state, are in some measure reflected in the first gospel and the Johannine apocalypse, if not also in the epistle to the Hebrews. How the Christian of Jewish extraction, but of universal sympathies, sought to commend the gospel to men of Greek ways of thinking, and to translate it into their forms of thought, we see in the Johannine gospel and epistles. But it is only as trees that we see men walking. The progress of past years gives reason to hope for still greater achievements in the future, but the goal of full understanding of this period still recedes.

IV. *Indirectly Contributory Sciences*

Concerning those lines of study which in our classification we designated as indirectly contributory, namely, the history of the canon, the history of the transmission and criticism of the text, the history of interpretation and of criticism, a very few words must suffice. They might all be included under the general title of the history of the attitude of the church toward the New Testament literature. Each division of the field is important, and each offers its own peculiar problems. If the history of interpretation and criticism belongs to New Testament study only as the history of any science belongs to that science, and has its value chiefly in enabling us to criticise our own efforts and achievements in the light of the work of our predecessors, a knowledge of the history of the text, at least its early history, is an indispensable tool for the recovery of the text. And the early history of the canon, especially the history of the process by which the conception of the canon of the New Covenant arose and the limits of such canon were fixed, closely related as it is to the history of the origin of the books thus canonized, and showing the attitude of the church toward the literature which sprang from its own bosom, is of the highest value, not only for the light which it throws back upon questions of origin and date, and the possibilities in respect to anonymity, pseudonymity, and the like, but also as defining to what extent and in what sense Christianity was in its origin a book-religion. The limits of this paper forbid discussion, or even detailed enumeration, of the problems in this field.

If I have in any measure truly apprehended and set forth the nature of the problems which to-day confront the student of the New Testament, I have shown that New Testament study is to-day an historical discipline; that progress is to be made precisely through the more perfect domination of it by the recognition of its historical

character; that large and difficult as are the problems of the New Testament student as such, the ends for which he works and under the impulse to attain which he toils can be adequately achieved only as New Testament study is related, on the one side, to the study of the Old Testament and of later Judaism, and, on the other side, to the history of Christianity at large, and finally to the history of religion and the study of religious experience.

SUPPLEMENTARY PAPERS

Professor C. W. Votaw, of the University of Chicago, presented an interesting paper on "The Oxyrhynchus Sayings in Relation to the Gospel-making Movement of the First and Second Centuries." The speaker said in part that the labors of Drs. Grenfell and Hunt, excavators for the Egypt Exploration Fund, have recently brought to our possession three short portions of extra-canonical second-century gospels. These papyri containing the Sayings of Jesus were unearthed at Oxyrhynchus, one hundred and twenty miles south of Cairo, in 1897 and 1903. A description of these papyri and their condition followed, together with a careful comparative analysis of the Sayings. They are in part parallel to the Sayings of Jesus preserved in the canonical gospels, somewhat more than one half of the new material duplicating what is contained there, but in form these passages exhibit considerable differences from the canonical accounts and not a small degree of independence. There are also among the Oxyrhynchus Sayings some very important ones which the canonical gospels do not contain. Several of these have parallels in extra-canonical gospel Sayings quoted by the Church Fathers of the second and third centuries; a few have no parallels in any Christian literature.

The main problems discussed were the exact meanings of the Sayings, and whether they are to be attributed to Jesus himself. The conclusion reached by the speaker was that the Sayings are fragments from one, two, or three second-century gospels; that the collection or collections of gospel material to which these Sayings belonged were of considerable extent; and that these Sayings, while of first-century origin, have been handed down without direct relation to the canonical gospels and are independent of any known gospel, even where parallelisms exist.

The gospel-making movement did not stop abruptly at 100 A.D., and although the canonical gospels entered the second century with great prominence and prestige, there was still to be a long period through which many other gospels were to compete with them for public favor. The question whether Jesus could have said this or that attributed to him in these fragments was a question which second-century Christians would scarcely have raised, and could not well have answered. They understood fairly well, and highly appreciated, Jesus and his teaching. He was to them of supreme interest and importance. But they did not apply a rigid method of historical investigation to the oral and written tradition of his life.

The canonical gospels increasingly manifested their superiority over all other gospels, from the time of their composition until the latter part of the second century, when they became the only fully recognized evangelic narratives. They early surpassed in favor and use such collections as the Oxyrhynchus Sayings represent, for they were in the main nearer in form to the original utterances of Jesus, better in arrangement, and more complete in their contents. It was right that they should increase, and these other competing gospels decrease.

Professor William Benjamin Smith, of Tulane University, New Orleans, La., presented a paper on the "Meaning of the Epithet Nazorean (Nazarene)." The text of the paper was drawn from Matthew 2: 22–23, "Being warned of God in a dream, he withdrew into the parts of Galilee, and came and dwelt in a city called Nazareth: that it might be fulfilled which was spoken by the prophets, that he should be called a Nazorean." In a most interesting critical discussion the speaker

pointed out the unreality of the reason assigned in the text, and that it was nowhere spoken through the prophets that he should be called the Nazorean; but inasmuch as the name was attached to Jesus, the least objectionable way to derive it was from a place of early residence. A city or town called Nazareth, however, seems to have been a geographical imagination, unmentioned in the Old Testament, in the Talmud, in Josephus, in Apocrypha, or anywhere prior to Eusebius. In fact, none of the histories or traditions mention the city or town as based on decisive testimony.

The epithet "Nazorean," however, occurs repeatedly in the oldest layers of the gospel-story, without any suggestion of tendency, especially in Acts. It is used also in the Talmud and Koran. The name seems to have been highly distinctive and familiar, and it would be passing strange if it were derived from a most obscure village otherwise unknown. It is used most often in denoting the Christians and in nearly all of its etymological relations is connected with the Hebrew Nôsrîm. This word occurs repeatedly in the Old Testament in the one sense of "guards" or "watchers," and its root, *nasar*, is one of the best known in the Semitic languages, meaning always to watch, observe, keep guard, defend, and preserve. In the latter sense it occurs repeatedly in the cuneiform inscriptions, with the same meaning. Now since ha-Nôsrîm was thus the perfectly familiar term for the Guards, the Preservers, it follows that when the term was used, or its Greek equivalent "*οἱ ναζωραῖοι*," the suggestion of the well-known meaning was inevitable. Even if the name had actually been derived from the hamlet of Nazareth, no one would have thought so; every one would have thought of the household meaning instantly and irresistibly. If a class of persons were called *the Preservers*, every one would understand it so, as *they that preserve;* no one would dream of deriving their name from the unknown village of *Preserveth*. We insist upon this because it seems decisive.

It seems reasonably certain that *ναζωραῖος* had originally nothing to do with the imaginary village Nazareth; that it was a descriptive appellative, like others so commonly appended to Divine names, both classic and Semitic (cf. Zeus Xenios, Hermes Psychopompos, Dionysos Hypokolpios, Apollo Pythios, and the like); that it designated the Deity in the aspect, character, or person of Guardian, Preserver, being nearly identical in meaning with *ὁ Ἰησοῦς*, the Saviour.

SECTION E

HISTORY OF THE CHRISTIAN CHURCH

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(*Hall* 2, *September* 24, 10 *a. m.*)

CHAIRMAN: PROFESSOR ERI BAKER HULBERT, University of Chicago.
SPEAKERS: PROFESSOR ADOLF HARNACK, University of Berlin.
PROFESSOR JEAN RÉVILLE, University of Paris.

THE RELATION BETWEEN ECCLESIASTICAL AND GENERAL HISTORY

BY KARL GUSTAV ADOLF HARNACK

(*Translated from the German by Prof. T. Bailey Saunders, by courtesy of The Contemporary Review*)

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How is ecclesiastical history related to general history? This is a question which is either not treated at all in text-books on ecclesiastical history or treated very briefly. The omission is easy to understand, for it proceeds from a view taken in earlier times and not yet exploded. The ancient and the medieval church regarded the history of the church as something that differed from the history of the world. The Catholic churches of our own day still regard it in the same light. They are convinced that the church is under God's special guidance, possesses an infallible doctrine, is governed by men appointed by the Deity Himself, and has received a promise that it shall remain unchanged until the end of all things. The church and its affairs are thus sharply separated from the rest of history; and while the rest of history, of course, exercises an effect on the church, the effect is only on the circumference and does not reach the centre.

This way of looking at the matter found its classical expression in the earliest account which we possess of ecclesiastical history, namely, that given by Eusebius. According to him the history of the church is only the further operation and fuller development of the fact that in Jesus Christ the divine Logos came down from heaven, and since that time the history of the church has a place

within ordinary history as a history of another kind. This is a view which is in no way affected by putting the beginnings of ecclesiastical history in some sense or other as far back as the beginnings of the human race. Such, indeed, was the attempt which Eusebius, following Justin Martyr, tried to make, and which Augustine actually carried out in his great work *On the City of God.* But by going back to the beginnings of the human race it is obvious that the whole conception of a church and its history may easily be frittered away and destroyed. There were liberal theologians in early times and in the Middle Ages who thus destroyed it — Abelard, for instance. This, however, was not the way in which the church itself understood that its history should be carried back. On the contrary, it clings to the belief that within the general course of events there is a sacred history which is supernatural.

The Protestants of the sixteenth century did not really break with this conception. They did, indeed, deny that the church with its external forms and its government was a divine creation. The whole idea of the church they explained from within. But of the spiritualized church, which they often saw only in the form of a small community, they asserted very much the same thing as Catholicism maintains of its big church. They hardly did anything to shake the notion that there were two kinds of events, and the church remained, as before, the scene of a second history. Orthodoxy in the Protestant churches in our own day still persists in this view. Whether there is any fundamental justification for it is a question on which we shall touch at the close; but certain it is that in the form in which orthodoxy still clings to the idea it is untenable. The very fact that there is absolutely no criterion by which we can distinguish two kinds of history is enough to destroy it. Moreover, it is also shown to be incorrect by the further fact that all the forces which the church was unwilling to recognize as of equal importance with itself, it had to combat as enemies, thus producing a state of permanent unrest. Finally, experience itself refutes this view, for only when belief in a special kind of history was given up did the history of the church begin to be understood.

It was in the seventeenth century that certain enlightened spirits first shook off this wrong notion. The eighteenth century further developed the knowledge thus won; in the nineteenth it was partly obscured again, but in the end it held its own. We can now say: *The history of the church is part and parcel of universal history, and can be understood only in connection with it.*

But if the history of the church is a part of universal history, it is closely bound up with other factors and developments, not as something alien, but as something akin to them; nay, it is only when thus bound up that it exists at all. The more attention we pay to these

connections, the better we shall understand it. There are four large departments of history with which we are here specially concerned:

I. Political history.
II. The history of religion in general.
III. The history of philosophy and of knowledge as a whole.
IV. Economic history.

I have purposely refrained from speaking of the history of civilization in particular, because it cannot be treated scientifically without being divided into various sections.

I.

Political history, in the widest sense of the word, is history proper; for on the way in which men are formed into communities, everything else that happens and all development depend. We may say, then, that the history of the state is the backbone of general history. If we fail to recognize this we reduce history to a series of romances or a sort of clever argument. For the scientific study of ecclesiastical history, therefore, we must insist, first, that the political or social character of the church shall be kept well in mind; and secondly, that its relation to the state in which it grew up, and to the states and communities in and among which it lives, shall be carefully examined.

That the church is a political organization has, of course, in some form or other, always been recognized. Even Eusebius spoke of it as a "polity." But it was only with the historian Mosheim that the first serious attempt was made to present this point of view. Up to his time people shrank from doing so, because they feared, not without reason, that the "divine" nature of the church would suffer if its political character were placed in the foreground. The clue which Mosheim gave was not sufficiently attended to by the philosophical historians in the Romantic movement during the first half of the nineteenth century, unless I except Richard Rothe; nay, even now the correct view has yet to make its way.

The results which it gives us I may state at once: *In every age the first thing to consider is the constitution of the church. But in every period of the history of the church its constitution has been dependent on the general political conditions and ideas of the time; or, to put the matter more accurately, the church has at all times shown a tendency to copy within itself the constitution of the state in which it lived, or to prescribe to the state the constitution which the state was to have.*

The truth of this proposition may be proved at every point in the history of the church. Consider the Roman Catholic Church — what else is it but the old Roman Empire reproduced in the ecclesiastical domain? At the opposite pole to the Roman Church stand the Free

Congregational churches. But do not they, too, correspond to the political ideal which prevailed in the land of their birth at the time when they arose, and still prevails? And all the different forms of churches which lie between these two extreme limits — are they not all of them ecclesiastical imitations of the political constitutions in and among which they exist? Everywhere the constitution of the church has followed the pattern set for the time being by the state, or anticipated the constitution which the state was to take.

But by tending to copy the constitution of the state in which it lives, the church comes into a double relation to the state — a friendly and a hostile relation. Up to a certain point this tendency helps the state to carry out its necessary aims. Yet on the other hand, as a result of this same tendency, the church becomes *the rival of the state.* The state must inevitably desire that everything developed within its borders shall be homogeneous with it, so far as law, authority, and the relations of the various classes are concerned. In this sense it is very glad to extend its toleration, nay, even to give privileges, to a community formed in accordance with its regulations. But the church, as a religious community, also possesses *rights of its own,* and as soon as it extends these over the whole field of its political organization, it enters into secret or open opposition to the state: it becomes its rival.

The conflicts, however, which in these circumstances were inevitable, led to complications of a still greater kind. For, in the first place, the church claimed to be the legitimate successor of the theocratic Jewish State, however much it also emphasized the fact that it itself was something new and of a different nature. In making this claim it at once, protest as it might to the contrary, advanced political pretensions of the most comprehensive character, even if at first it asserted them only negatively. In the second place, the church was not content with simply copying within itself elements in the organization of the state. It refused to allow anything that it copied to have any value outside its own pale. By its own marriage-law it depreciated the civil marriage-law. By the development of its official hierarchy it lowered the authority of the state officials. By its Papacy it lowered the Imperial dignity. Finally, in the third place, after compelling the state to accept the Christian creed, it put the state into a position of the greatest difficulty. By accepting the creed, the state placed itself on the ground taken by the church, and declared the ideals of the church to be the right and the highest ideals. If it was now driven to defend itself against the claims of the church to be master, it was compelled to fight with broken weapons, because it dared not attack the ultimate principles of the church from which its own power was derived. The "Christian" state, then, when confronted by the church, was bound to come off worst; for

it was only half what the church was entirely. The Christian state is the state undermined and sucked dry by the church. It is like a towering tree brought to decay by the creeper that has fed on its sap. But when the state decays the national consciousness is always in danger of disappearing as well.

With certain exceptions, however, things did not come to this pass even in the Middle Ages. In the East the state found ways and means of taking over important functions of theocratic government, and of effecting an intimate fusion between church and nationality. In the West the tension between church and state led to struggles which promoted the progress of civilization; for at the very moment when the church appeared to have attained its aim, the proof was afforded that, however capable it may be of winning a victory, the church is unable to keep possession of the field. Nay, the great developments then began which led to the formation of our modern states and of the Protestant churches. It is part of the very character of modern states that they no longer are, or aim at being, Christian in the same sense as medieval states, and Protestant churches have either wholly or in part given up all theocratic pretensions. But in this connection we must not overlook the fact that even the constitutions and ecclesiastical ideals of the Protestant churches, although they derive their basis from the inherent nature of Protestantism and from the Bible, are in strict dependence on the political theories and ideals which modern times have produced. The state church, the national church, more particularly as it is developed in Germany, offers in all its stages a precise parallel to the developments of the modern state, and the various theories of the state. In the same way, wherever free churches are formed, they are dependent upon the republican and democratic ideas of the period. The converse, it is true, has also happened: a Christian idea has preceded the political idea; but it was the political idea which first produced an ecclesiastical polity corresponding to it. The Christian idea, too, as a rule, asserted itself only when political ideas akin to it came to its aid.

This shows us that the study of political history is the necessary preliminary to the study of ecclesiastical history. Without it the most important developments remain unintelligible. In the history of the church, however, every stage of the political history of the last two thousand years is still, as it were, actually present. In the two great Catholic churches, the Roman and the Græco-Russian, the forms and tendencies of the Middle Ages are embodied; they still live on in them and still threaten us to-day — in Jesus Christ's name — with that Babylonian theocracy which destroys all national and individual freedom. We know how it came about that this universal theocratic ideal could establish itself on Christian ground. A great

fraternity embracing the whole human race — have we not there one of the inalienable ideals of Christendom, yet also an ideal which gave room for the mistaken notion, nourished as it was by Old Testament ideas, that this union could be attained in the quickest and safest way by a universal political church-system? The notion is far from being exploded, but it will be driven from the field just in proportion as the ideal of a Christian fraternity *on the basis of freedom* becomes a power.

On the basis of freedom — and *on the basis of nationalities;* for another lesson which political history, when examined in connection with ecclesiastical history, teaches us is that in the latter nationalities play an enormous part, and that any attempt to get rid of them is in vain. Every great nationality has made itself at home in the church in its own way. We can distinguish a Greek, a Latin, a German, an English, an American church-system, etc., etc., and the distinctions that obtain here are more important than all others. They are apparent, above all, in the mode of worship and in the way in which Christianity is practiced; but even the development of doctrine has always been subject to strong national influences. No one who overlooks these distinctions, or explains them wrongly, can help falling into the grossest mistakes and making history obscure. The Christian fraternity at which we aim will come, not as a union of denationalized individuals, but as a union of friendly peoples, each one of which will have developed the best qualities of its race and nationality. This cannot take place unless each nation knows its own and others' national peculiarities. Nor can the ecclesiastical historian dispense with this knowledge if he wishes to understand the past and prepare for the future of the church.

II

National history leads us direct to the history of religion in general; for the religions of the peoples to which the church came are very closely bound up with their national peculiarities. If, then, we are to study the history of the Christian religion, a thorough knowledge of the religions of the Greek, the Roman, the Germanic peoples, etc., is necessary. What resistance did these religions offer, what kind of resistance was it, in what respect was it strongest and in what weakest, and by what means did the church overcome it? — these are the questions which at once arise and demand an answer if we are to understand the history of the church.

But there is something more. We should be very short-sighted if we conceived the relation between the Christian religion and other religions solely as a contradiction. That they, too, have had an influence on the *development* of the Christian religion has long been

known. Formerly, indeed, it was believed that this influence must be limited to the Christian heresies. It was held that the existence of the Gnostic sects and the rise of other phenomena were to be explained by the influence of paganism on Christianity. But it has become evident in an increasing degree that *the church itself* was also affected by the alien religions with which it fought. Their influence is apparent in the most varied fields, but especially where rites and ceremonies, sacraments, and popular religious ideas are concerned. In Catholicism a religion of the first and a religion of the second order can be distinguished as existing side by side. If the first kind was to a considerable degree affected, the second was very strongly determined by extra-Christian superstitions. To investigate the extent of this influence in regard to each particular problem is always, no doubt, a task demanding a great deal of care and critical tact. We are more inclined in these days to overvalue than to undervalue the influence of alien religions, and we are too ready to assert dependence where all that is in question is a parallel set of phenomena, developing here and there spontaneously. The abuse of this method, however, must not prevent us from seeing that there are many important phenomena in the inner history of the church which can be explained only by taking account of alien religions; and that, when we are dealing with this history, to look at it from the point of view of the general history of religions is a method that has already borne rich fruit and promises still more.

But it is not enough to study the influence of alien religions on the *history* of Christianity. Nay, we have seen with increasing clearness in the last few decades that the *origin*, too, of Christianity cannot be understood without taking account of them. The Christian religion, no doubt, is the religion of Jesus Christ; but it came when "the time was fulfilled." The Christian religion, then, is the Jewish religion fulfilled, that is to say, brought to a completion and transfigured. But the Jewish religion in Jesus' time was not a simple affair; on the contrary, through the labors of the prophets and the influence of other religions it had become a spiritualized but also a highly complex fabric. In the breadth of its development it was a syncretistic religion, but even on its inner side it was deepened and enriched by extra-Jewish elements. In the course of its transformation into Christianity it did not lose these component parts of its nature. That is why we must go back to Babylon and Assyria, to Egypt and Persia, to discover the origin of important elements in Christianity. We are doing this to-day, but in doing it we too often overlook the more serious and difficult business of studying the *changes in meaning* which the received elements underwent. Merely to state that they exist, and to say whence they come, carries us a very little way. Nay, we shall become involved in huge misunder-

standings and confusions if we do not attend to the *place* which the old material held and the *new meaning* which it received in the Christian Church from the very beginning. It is no doubt true that the seven great Angels came from Babylon, the Devil from Persia, the Logos from Greece. But in the gospel and the apostolic writings the Devil means something different from Ahriman, and the Logos of John and Ignatius is not the Logos of Philo. We can only desire with all our hearts that not only in regard to the Old Testament, but also in regard to the New, the investigation of religious history shall go on; but we must just as earnestly insist that in this process the great changes in the meaning of ideas and conceptions shall be clearly kept in view. Even where the dependence of Christian ideas and practices on pagan is particularly evident — I mean in the case of the sacraments — we must not be content with merely pointing out this dependence; for the Christian doctrine of the sacraments has characteristic features of its own; as is proved, for example, by Justin Martyr's account of baptism.

There is another reason, too, why we must study the history of religion in general. We must study it not only because the history of the church in nearly all its stages has acted on other religions and been itself affected by them, but also because a complete understanding of *one* religion cannot possibly be obtained without a knowledge of others. It is true that the historian of the Christian Church is here at an advantage compared with the historian of any other religion; for Christianity — together with its precursor, Judaism — is, in space and time, content and development, something so universal that almost all conceivable religious phenomena are to be found in its history. Nevertheless we cannot hope to obtain a definitive knowledge of Christianity unless we compare it with other religions. We run too great a risk of taking what is important for what is unimportant, what is primary for what is secondary, and *vice versâ*, if we do not compare — so far as comparisons are at all possible. Here, too, the words of the poet apply:

> Ehe es sichründet in einem Kreis
> Ist kein Wissen vorhanden;
> Ehe nicht Einer Alles weiss
> Ist die Welt nicht verstanden.

I do not, of course, mean that our Faculties of Christian Theology should be turned into Faculties of the General History of Religion — we are not here concerned with any merely academic question — but still I am quite sure that the student must not separate the history of Christianity from this wider history, and that the progress of knowledge depends on observing the connection of both.

III

The history of religion in general leads us to the psychology of religion, and here we have a fresh means of understanding the facts of ecclesiastical history. It is only in the last ten years that we have begun to bring religious psychology and the comparative history of religion into connection with each other, and we have thereby obtained some very valuable results already. Let me specially mention the labors of William James. They have shown us that to study the history of the Christian religion on its dogmatic side alone is not enough, and that together with and previous to this study we can and must pay attention to the fundamental manifestations of religion themselves. In this way the *independent character* of the religious life has been more vividly brought to mind, and we have been able to get a better view of the question as to what is morbid and what is healthy in religion, what is eccentric and what is central.

Still, these investigations are more applicable to the religions before Christianity than to Christianity itself; for, owing to the close connection between religion *and ethics* which Christianity exhibits, all manifestations of religion that are devoid of an ethical meaning lose their force. They seem to us only just tolerable but not characteristic or normal expressions of religion. Then again, the clear and certain character of the Christian idea of God leaves no room for a state of religious emotion based on the feeling that the Deity is a dark and overwhelming force. Christian piety, as the apostle Paul says, is a "reasonable service," and therefore it stands nearer to the highest qualities and activities of the mind than to the lower.

To philosophy, too, therefore, and to knowledge generally it stands in close relation. This was noticed even in the earliest ages. The Christian apologists of the second century explained Greek philosophy as due to the same spirit of which the full revelation was exhibited in Jesus Christ; and Clement of Alexandria regarded it, equally with the Old Testament, as a preliminary stage of the Christian religion. The development of dogma in the primitive church stood under the influence of Greek philosophy, more especially of Platonism; and in the Middle Ages Aristotle helped to build up the church's intellectual system. In modern times the philosophy of Leibnitz, Kant, Hegel, and Schelling has had its effect on Protestant dogmatics; and in our own day theology has been strongly influenced by the modern theory of knowledge and by psychology generally, as well as by the theory of development.

This is all so evident and so notorious that there is no need to expatiate on the fact that without a knowledge of the history of philosophy we cannot study the history of the church. But Hegel and his followers ask us to take a step further: Christian doctrine and

philosophy, they say, are not only intertwined with each other, are not only akin to each other, but are in the last resort identical. The considerations leading to this hypothesis are as follows: Religion exhibits the relation between man and the Absolute, and a knowledge of the Absolute is that to which our intellectual efforts are directed. In the lower stages of religion, however, this relation is at best only felt; and hence these stages are incomplete, particularistic, and incumbered with alien matter. As development progresses they become more and more pure and spiritual, until they reach their culminating point in Christianity. God is then revealed and recognized as the absolute and immanent Spirit. According to this view, the history of the formation and development of Christian dogma is the real history of the Christian religion; and the most important elements, too, in dogma are the speculative assertions, especially those on the nature of the Trinity and on Christology; for in them the pure, pantheistic knowledge of God comes to expression, in part clearly and plainly, in part only lightly veiled. In this way the history of philosophy and the history of higher, especially of the Christian, religion, are, rightly understood, identical; nay, in their identity we get not only the true history of the human spirit but also the history of God Himself: in this history the *Absolute Spirit* "has come to itself."

This magnificent conception of the history of the church is not, indeed, without some value; but, for all that, it cannot be accepted. That the knowledge of God as the Absolute Spirit forms a main element in the Christian religion is true. On the other hand, since the aim of philosophy is to get at the ultimate reasons for everything, and these are not to be found in anything material, an elective affinity is thereby established between philosophy and spiritual religion. Moreover, the higher forms of religion have at all times made use of philosophical thought in order to justify the idea of God and give it a fuller development; and, conversely, philosophy has taken account of the ideas expressive of religious and more particularly of Christian faith. But these circumstances must not blind us to the fact that religion and a philosophical theory of the world, so long as the latter keeps to its own ground, are two different things. Religion is a definite state of feeling and will, basing itself on inner experience and on historical facts. This it remains even in its higher stages; and hence the intellectual element in it, although an absolutely necessary element, always takes the second place. Again, religion is never "disinterested," as any theory must be; on the contrary, it has to do with hopes and aspirations; nay, we may even say that religion is the instinct of self-preservation in a higher form — an instinct, however, which in the Christian religion is not concerned with the empirical *Ego* and with earthly life, but with the inmost core of this *Ego*, which in another world, the world of Freedom and the Good, sees its

true home. Philosophy cannot and may not know anything of all this, except in so far as it calls religion to its aid when it attempts to study the philosophy of religion. For without religion philosophy remains bound down to the five senses and the whole apparatus of psychology and logic, which everywhere carry it back to at least *two* fundamental factors and *one* uniform process. In religion, on the other hand, it is *one* fundamental factor and *two* processes which we are led to accept. The obscurities to which this state of things sometimes give rise; the "belief" of philosophy in the unity of the fundamental factor and the half-belief of the theologians in the God of religion, have produced endless confusion in the course of history, and brought about the erroneous notion that the results of pure knowledge and of religion are essentially akin to each other or even identical. No! they are different; they are two parallel lines which — religious philosophy apart, which is not *pure* philosophy — are connected only, as it were, by the bridge of certain analogies, or by the flights of fancy which merge their different fields into one in order to give them life.

However — be the distance between them what it may — in the actual history of things they are very closely bound up with each other. They have done each other great service, and together they represent the higher life of humanity. How much does religion, even the Christian religion, owe to the progressive achievements of philosophy and the various forms of knowledge! How much they have done to purify it, to clear it of false ideas, and to free it from impossible pretensions! Religion, no doubt, is very tenacious in clinging to old prejudices, and the history of the relation between philosophy and religion is also the history of a struggle. Andrew White has described it for us. Religion seems always to have had to surrender; but it only *seems*. All that it did was to abandon outworks that were no longer of any use to it. It shed the leaves in which there was no more life. On the other hand, in none of the intellectual systems that have prevailed from time to time has the human mind ever spoken its last word, and nearly all of them have borrowed something from religion. The human mind has had to take these systems back again and again, and put others in their place. The more closely and attentively the ecclesiastical historian examines this struggle of the mind in itself and in its relation to religion, the deeper he will go, and the more indispensable he will make the study of his subject to the science of history as a whole.

IV

We said just now that the human mind has never spoken its last word in any of the intellectual systems that have prevailed from time to time. Is that true? Have we not, perhaps, its last word in the

theory which tells us that it is economic conditions — I mean food, the supply of food, and the place where it can be obtained — which ultimately determine all intellectual life and all higher development, including that of religion? I must not try within the limits of this lecture to explain my reasons for declining to accept such a theory. I may say, however, that it seems to me to be refuted by the mere fact that the most material element acting upon man always produces feelings and ideas which themselves act as forces in their turn, and stand in no simple proportionate relation to their material causes. Moreover, as long as men continue to sacrifice their possessions, their blood, and their life, for ideal aims, it will be impossible for any one to maintain the materialistic view of history except with the help of sophisms.

But although we decline to explain everything that happens by the play of economic conditions, we may still gratefully acknowledge that this latest, the economic, view of history has shed and will continue to shed a great deal of light on the history of the church. Let me show what I mean by a few examples. The great extension of Christianity in the early centuries cannot be explained without keeping the social and economic views and practices of the Christian communities in view. Every one of these communities not only tried to relieve the poor, to provide for widows and orphans, the sick, the weak, those who were out of work or persecuted, etc., but it was also *a regular association for mutual help.* By the union of all these communities in the Empire into a firm alliance with one another a social organism arose which could not fail to attract, in the highest degree, the economically unfortunate. That this is really what happened is shown by pagan writers themselves. It was shown, for instance, by Lucian in his *Peregrinus Proteus.*

But not only did the church step in where social relations were concerned; its thoughts and ideas were also determined by its attitude in questions of economics. The distrust which the church shows toward wealth and capital is in part to be explained by the poverty of the early communities; and here, too, its theories about earthly possessions have one of their roots. When it afterwards came to number both rich and poor in its ranks, it retained that distrust. This had a very paradoxical result: The dangers of wealth, it was said, exist only for the individual Christian; they do not exist for the church, which is preserved from them by its sacred character. There is no harm, then, in the church becoming rich. Rich, accordingly, it became. Part of its wealth was due to the fact that in the dark days of inner and outer convulsion a man's possessions and his capital were still safest under its protection. Hence men often handed over their property to the church, not only in order to save their souls, but also to secure themselves from high-handed acts or

sheer robbery. The church entered on the Middle Ages as a great and wealthy and therefore aristocratic power; and the immense struggles between Emperor and Pope, Princes and Bishops, were all in the last resort struggles for wealth and dominion.

The whole history of the church in the Middle Ages may therefore, nay must, be studied from the economic point of view. This is very evident even in the history of monasticism. Up to the time when the orders of mendicant friars arose, the development of Western monasticism has a place in the history of the large landed estate. An abbey would sometimes form the centre of such an estate, and the abbot *nolens volens* had to provide for his monastery before he provided for the spiritual welfare of his monks. But even the movement which produced the mendicant friars very quickly became in its turn part and parcel of an economic movement, although of a different kind. Light may also be shed on the development of the Papacy from the same source, for one of the conditions of its becoming a sovereign power was the possession of landed property. In the struggle about the investiture of the bishops the questions at issue were concerned just as much with property as with dominion; and as a European power whose possessions were not on a par with its position, the Papacy was especially affected by the economic upheaval which took place in the fourteenth and fifteenth centuries. If it was to survive, ready money had to be collected from all sides. To get money it had to raise its spiritual pretensions in every direction, and make them into fresh rights; nay, more, it had to multiply the means of grace which the church offered, and exploit them as financial resources. Just because it was a financial power, however, the Papacy now began to excite distrust and dislike, and this it was that paved the way for the reforming movements. We can thus see how greatly religious theories and ecclesiastical arrangements were dependent on this development. Of the new sacramental observances, of the multitudinous rites and ceremonies, and of the fresh dogmas framed upon them, a large number had their origin in economic and financial necessities.

In this respect the upheaval which the Reformation denoted did not involve any radical change. Here, too, economic and social conditions played a great part. That the Reformation got the upper hand among a portion of the German people was due, first and foremost, to the princes, who aimed at creating territorial churches for themselves and being masters in their own house. In this connection, however, we must not forget that in the larger towns and in the country districts the Reformation assisted the class consciousness of certain aspiring orders in the community, and that, on the other hand, the knights of the Empire, who were in a bad way economically, attempted by its means to regain their previous position. But it is in

France and, above all, in England, that the close connection between the Reformation and social and economic conditions is particularly plain. Even after England had shaken off the Papacy it was social and economic conditions which determined religious parties and struggles: the King and the aristocracy held to the church of the Thirty-nine Articles; the higher middle classes were Presbyterian; the aspiring lower middle classes were Puritan and rallied to Cromwell's flag. When we look, too, at the way in which, both there and in Protestant Germany, the character and aims of the church were then settled by the theologians, it is plain that side by side with political conditions the theories adopted were strongly acted on by social influences as well. These influences extend even to dogmatics and ethics (the "divinely appointed" orders), and to show that in detail is one of the tasks of the future. We must never allow ourselves to forget, however, that behind the economic factors there are always the political, and that it is these that really turn the scale. In power and effect they outweigh all other factors, so far as externals are concerned.

That the history of the church is most closely bound up and interwoven with all the great branches of general history, is what I have tried to show. In recognizing this fact, and in shaping our study accordingly, there may possibly be some risk of our losing sight of or undervaluing the *special character* which attaches to the history of the church. We shall guard ourselves against any such danger if we always bear in mind that all our labors in this sphere ought to help us to throw light on the question, *What is the Christian religion?* This must ever remain the guiding-star of our researches, however wide the range which they will have to take. If ecclesiastical history loses sight of that guiding-star, it will also lose the right to form a special subject of study within the science of history. If it follows that star, then what is characteristic of every independent subject of knowledge will also hold good of it — that it unveils itself only to the man who devotes himself entirely to it. Grimm once made the fine observation that knowledge has no secrets, though it has its secrecies; it has no *Geheimnisse*, but it has *Heimlichkeiten*. The history of the church also has its *Heimlichkeiten*. The man who is half-hearted in his efforts about it will see nothing; it is only when he woos it with the loyalty of a Jacob that he will win the bride.

In the history of the church, however, these *Heimlichkeiten* go very deep and are very precious. We have seen that there is no such thing as a double history, and that everything that happens enters into the one stream of events. But there is a single inner experience which every one can possess; which to every one who possesses it is like a miracle; and which cannot be simply explained as the product

of something else. It is what the Christian religion describes as the *New Birth* — that inner, moral, new creation which transmutes all values, and of the slaves of compulsion makes the children of freedom. Not even in the history of the church can any one get a direct vision of this inner evolution accomplished in the individual, nor by any external facts whatever can any one be convinced of its possibility and reality. But the light which shines from it throws its rays on what happens on the stage, and lets the spectator feel in his heart that the forces of history are not exhausted in the natural forces of the world, or in the powers of head and hand. This is the *Heimlichkeit* of the history of the church because it is the *Heimlichkeit* of religion.

PROGRESS OF ECCLESIASTICAL HISTORY, ESPECIALLY ANCIENT, DURING THE NINETEENTH CENTURY

BY JEAN RÉVILLE

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Ladies and Gentlemen, — In this paper I have to condense the progress of ecclesiastical history during the nineteenth century and to describe its present state. Ecclesiastical history, that is, the history of the Christian Church in all its forms and of the Christian religion in all its varieties, is a very extensive science, including the whole religious and moral history of the Christian world. And that history itself is intimately joined to the whole of the spiritual life as well as to the political, social, and economical evolutions of the different Christian peoples. It is not in a few minutes that one can draw up an inventory of such an immense field.[1] My aim is only to put down some guiding-marks, which may be fit to point out the progressive course of this history, especially in the field of ancient Christianity, and to show the present direction of our studies.

Ecclesiastical history is born out of the Renaissance and the Reformation.[2] In the Middle Ages there were chroniclers, not properly historians. The Reformation, while claiming to be a restitution of pure primitive Christian doctrines and institutions which had been spoiled and corrupted by the Roman Church, was obliged to justify such a pretension by historical proofs.[3] The Catholics, at the other side, endeavored to refute the historical arguments of the Protestants.[4] Ecclesiastical history, thus from the very outset subdued to church controversy, took first a confessional character. But the passion of the contest and the importance of the cause imparted

[1] Amongst the conditions imparted to European official speakers the second was: "The time to be occupied in the delivery of an address shall be, as nearly as practicable, forty-five minutes."

[2] We are speaking here of ecclesiastical history in modern Christianity. Ancient Christianity has had a first-rate historian, Eusebius from Cesarea, and others, who left useful writings, although not equal by far to his. But we may say, without doing harm to them, that none of them had the sense of history as we understand it now in modern times.

[3] For instance, Flaccius and the Centuriae Magdeburgenses.

[4] See Baronius and his followers.

to the scholars a life and an ardor, which they would never have exerted without this continuous stimulation, and so ecclesiastical history got the start of all other sections of historical science.[1]

After all, with many of them the blessing which results from conscientious researches of the truth prevailed over care of confessional apologetic. One cannot praise sufficiently the admirable works of the monastic scholars and of the masters of Protestant high schools in France and in the Netherlands during the seventeenth and the first half of the eighteenth century.[2] They have strongly built the layers upon which the scholars of the nineteenth century have erected the edifice under which we take shelter. In a solemn occasion as this one we ought to pay homage to the forefathers, who have founded the greatness of our house.

The result of the intense controversy between Catholic and Protestant scholarship was quite different from what the opponents looked for. It had illustrated the errors on both sides, the prejudices and the party spirit of both. Unconfessional critique availed itself of this experience. Rationalistic history arose, especially in Protestant countries, in England and Germany. In France the source of religious scholarship was exhausted by the persecution of the Protestants and of the Jansenists, by the gradual weakening of the Gallican Church.[3] French philosophy in the eighteenth century disdained to study the past of a religion or of a church which were considered as duly convicted of error and imposture, and the Roman Church did not care for researches which seemed to be dangerous for her. Since, and till the pontificate of Leo XIII, Catholic countries did not contribute any more to the progress of ecclesiastical history otherwise than on secondary questions of archæological nature or of local history, or by the work of some freethinkers and some Protestant countrymen.

[1] Historical criticism is really born out of ecclesiastical history. From there it extended into what is called "profane" history.

[2] So we may mention: among the Jesuits, Sirmond, Fronton du Duc, Petau, Labbe, the first Bollandists; among the friars of the Oratoire, Jean Morin, Le Cointe, Thomassin, Richard Simon; amongst the Benedictines of St. Maur, Mabillon, d'Achéry, Martène, Durand, Montfaucon, Ruinart, etc.; among the men of Port-Royal, Le Nain de Tillemont; the authors of the *Gallia Christiana;* further on, Elie Du Pin, d'Herbelot, Baluze, etc. And among the masters of the Protestant reformed academies: G. Vossius, Fr. Spanheim, Vitringa, Hottinger (in Switzerland), Louis Cappel, D. Blondel, Jean Daillé, Basnage, Leclerc, de Beausobre, Samuel Bochart, etc. We must mention also in England: John Pearson and Usher. In Germany the only scholar, who at the end of the seventeenth century has some qualifications of an historian, is Arnold. He was one of the first who were able to appreciate the historical value of heretics.

[3] Among the Protestants Pierre Bayle, and among the Catholics Huet, Bishop of Avranches, are at the beginning of the eighteenth century the last representatives of scholarly trained ecclesiastical historians (with some Benedictine friars, who continued, though with less profit, the work of their predecessors). Bayle and Huet are both anti-dogmatic writers, but with the second skepticism tends to submit reason to the authority of the church; with the first, on the contrary, skepticism inspires toleration and free criticism. Bayle, who died in 1706, is for a good deal a forerunner.

Rationalistic ecclesiastical history, though claiming to be independent of dogmatic prejudices, nevertheless obeyed some doctrinal ideas. One while, especially in England, it aimed chiefly to identify true Christian religion with natural religion, and to denounce, as sacerdotal and theological adulterations, fortuitous or voluntary, all doctrines or institutions of the churches which did not agree with that so-called natural religion, that is, with their own religious philosophy.[1] Another while, especially in Germany, it endeavored to show, not only that all things in the history of the church must be explained in a way satisfactory for reason, — which is indeed a postulate of scientific history, — but still more, that all teachings of true Christianity, supernatural as well as natural, were perfectly reasonable.[2]

Rationalistic historians of the eighteenth century have done a very useful work of clearing away. Their criticism was short-sighted; they do not go to the bottom; the proper sense of religion is not very sound in their works and their philosophy of history is very poor. However, they dealt a blow to the traditional dogmatic conception of ecclesiastical history, after which it could not rise again on scientific ground. Their work will be taken up later on by men of a freer spirit and of a less vulgar common sense, like Schröckh, Ständlin, Spittler, Planck, and later on still, by Gieseler and Hase, whose sense of religion and feeling of historical continuance fired the scholarship, whilst their respect for the texts and the documents secured the soundness of their work.

But let us not anticipate. Between the rationalistic historians of the eighteenth century and those famous masters of ecclesiastical history in the nineteenth century, the spiritual world had been renovated by a great and teeming revolution of idealist philosophy. Ecclesiastical history, indeed, like every science of information, excludes all party and dogmatic or philosophical prejudice. Its sole allowable aim must be to reconstitute men and facts of the past in their objective reality and to teach how events proceed the one from the other. But experience makes out that historical investigations must be led by certain principles to be productive, and it is philosophy which inspires those principles. After all, we observe that in our studies we are indebted for all progresses to certain

[1] So, for instance, in the works of Lord Herbert of Cherbury and Lord Shaftesbury, of Matthew Tindal, Toland, Collins, and of the historians of Locke's school. Hume's skepticism had most fatal consequences for rationalism and favored a revival of authoritative faith for practical use.

[2] See the works of Semler, J. A. Ernesti, Michaelis, Walch, Mosheim, etc. The last one has sometimes been called "the father of ecclesiastical history." We ought also to take into account the influence of the "pietism" of Spener's school. Although not favorable to scientific study of religion, it conduced to throw off the yoke of orthodox intellectualism by urging the importance of piety to the prejudice of the right doctrine. The pietists became anxious to know the history of religious life and feelings, hitherto too much neglected.

regulating ideas, which are directing the activity of our mind. Conjecture, which may be looked for as the sounding-lead of science, springs up from the impression made upon our mind by the first observation of facts; so the state of our mind, that is, the whole of our knowledge and of our ideas, is contributing for a great part to its springing up. Quite as an engineer or a geologist cannot seek after hidden treasuries of ore in any country, without being guided by certain principles or by the results of previous inquiries, so the historian cannot sound the past without being directed by some presuppositions. To be guided by conjecture without being subdued to it, to be able to change it as soon as the study of documents require, that is just the historian's skill.

In the field of historical study it is not, as in that of philosophical researches, Kant whose influence was directly quickening. His abstract idealism and his quite static criticism do not care for history. Like the leading thinkers of the French Revolution he looks only after human nature in itself and does not want to study it in time or space. The teeming principles for ecclesiastical history came from other thinkers: from Lessing, who regenerated the old purely intellectual rationalism by his esthetical sense of spiritual life's sound realities and by a thoroughly human conception of religion and ethics; from Herder, the poet and the prophet, the first perhaps who possessed that living sense of history which we have now, one of the first certainly who was gifted with that precious ability of feeling intimately what other civilizations and other peoples had thought or experienced, instead of judging them all by the measure of his own time and of his own spirit; Herder, the generous author, who set forth the organic conception of history considered as the education of humanity, without isolating the individual man from society nor humankind from nature; from Schleiermacher, who acknowledged the specific character of religion, that is, the consciousness of the band which unites the finite and the infinite being, and who taught thus theologians to distinguish in every particular religion what is temporary, local, and special in it from what is properly and fundamentally religious in it; and above all others from Hegel, whose philosophy proclaimed identity of the real and the rational and by his identification of "sein" and "werden" assigned to moral as well as to physical science the no longer contested duty of recognizing the logical evolution of things and beings. Thus the whole religious history of mankind was involved in the organic unity of universal evolution as the highest expression of the internal dialectics which are the life of the Spirit or the Being.

To be sure, the influence of those great thinkers was not always a good one. Historians, who drew their inspiration too exclusively from one or the other of them, fell victims of their imagination, of

their theology, or of their speculations. Too romantic pupils of Herder or of Schelling wrote romances instead of strict and conscientious history. The theologians, who followed Schleiermacher, too anxious to reconcile their scientific work with their ecclesiastical or dogmatical belief, forfeited treasuries of scholarship in sad combinations of the "Vermittlungstheologie." [1] The too zealous disciples of Hegel made history subordinate to philosophical speculation and wrote historical works, which in spite of their more severe form were, in the main, not much different from the historical romances.

But those who knew how to derive profit from such a strong spiritual education, without giving up what requires a severe historical method, had a great influence over our studies. It will be sufficient to notice that from Schleiermacher proceeds Neander, the historian who perhaps better than any other knew how to bring to life again some of the great Christian personalities of the past, and that we owe to the Hegelian school F. Chr. Baur and D. F. Strauss.

Strauss's work has been chiefly negative. His impressive criticism overturned the precarious display of the midway theologians and proved the weakness of many traditional certainties which passed for inexpugnable. But his criticism was too theoretic, too little caring for precise texts and facts as to be able to produce lasting positive results.

F. Chr. Baur is of another value. With him begins really the modern era of ecclesiastical history. For once and for all he put in a clear light the principal tendencies whose clash forms the woof of the first Christianity. His chronological or critical judgments on several texts or documents of ancient Christian literature may be sometimes erroneous; the Hegelian dialectics may have mastered him more than it ought; he may be too much an intellectualist, too anxious for evolution of the ideas and not enough for that of feelings, of religious life, or of the real and complicated conditions of social life. Nevertheless, his dissection of primitive Christianity — the antithesis of the Judæan and the universalist Hellenic Christianity, the very importance of the Gnostic movement (already hinted at by Neander indeed) — has supplied data which have become since a common good for us all and which are no longer contested. Before him none had cleared so distinctly the internal dialectics of the Christian dogmatic evolution or of the origins of the Catholic Church. At least he was one of the first ecclesiastical historians who saw so distinctly how important it is to know other ancient religions to understand the history of ancient Christianity.

Ecclesiastical history as conceived by Baur is just the contrary

[1] Most of the representatives of that "Vermittlungstheologie" are dogmatists rather than historians. Such are: Twesten, Nitzsch, Julius Müller, Dorner. More properly historians are Ullmann and chiefly Alexander Schweizer (of Zurich), the most original of Schleiermacher's continuers.

of that which the rationalistic historians of the "pragmatic school," like Schröck or Planck, wrote before. These took up with the data of the historical witnesses, linked the facts together with the tendencies and the needs of the individuals who carried them out; they explained the course of history by general and exterior teleology, and judged men or facts of the past at the measure of their own reason and their own conscience, without taking into account the difference of time and country. Neander had already reacted against this quite exterior manner of writing history. He did not attach much importance to institutions or to the concrete realities of social life, but tried to penetrate into the inmost personality of the souls and to raise up some great representative men of the past for illustrating the successive periods of Christian history. Endowed with an intense power of bountiful and generous sympathy, he took up especially the edifying side of history. It was for him a school of Christian experience. But, if he has indeed depicted with a masterful talent the history of some very best Christians, he left thus a series of portraits rather than an organic history such as a scientifically trained mind requires.

Baur, on the contrary, treats the history of Christianity as before all the evolution of ideas. Great individualities are neglected by him, or, better, they are but representatives of ideas; I might rather say, nearly symbolic persons. They are not the agents of history; they are themselves the instruments of the internal dialectics which are unfolding through centuries. A grand and imposing structure, indeed, and — let us say immediately — not only a theoretical work, for his materials are elaborated by an untiring scholarship and by strong critical researches; but, after all, sometimes an artificial building, where the intellectual part, the ideas, are preponderating to the prejudice of sentiment, piety, and intuition.

Baur's work, however fundamental, wanted thus to be amended and completed. Some of his pupils, like Ed. Zeller and Weizsäcker,[1] tried to do so. Others, like Ritschl and his school, engaged with a really excessive passion in a reaction against the too abstract and too speculative tendency of his historical conception. Others still, the continuators of ancient rationalism, like Gieseler and Hase,[2] although availing themselves of the "Tübinger School," took good heed not to be urged by speculation and, as they preserved them-

[1] The historians who proceed directly or indirectly from the Tübinger School are very numerous. We shall mention only: Schwegler, Köstlin, Hilgenfeld, H. Holtzmann, Hausrath, Holsten, and Pfleiderer.

[2] Ancient rationalism had its last survivor in Dr. Paulus. But it had been renewed by Kant's philosophy, with scholars like Bretschneider and Wegscheider, and, under the influence of Schleiermacher and of the philosopher Fries, it had been enlivened by de Wette. It seems inconvenient to speak here of the supernaturalist, doctrinaire and intellectualist school of Hengstenberg, because he made his scholarly work wholly dependent on doctrine and ecclesiastical tradition.

selves also from the sentimentality of the Schleiermacherian school, they imparted to their historical work a more objective character and a more measured spirit.

Now we arrive at the quite modern and nearly contemporary period of our studies. Here our report is of a more delicate nature, not only because we should have to speak of scholars still living, like Pfleiderer and Harnack, the two masters we have the privilege to greet respectfully at this Congress, but also because there is not yet enough distance for judging impartially scholars and tendencies with which we are ourselves connected.

Two statements require at the first sight our attention. While during the first half of the nineteenth century ecclesiastical history was but little studied except in German universities, since about 1860 other countries have taken a more and more active part in the common scholarly work.[1] First of all, Dutchland with the great school of Leiden,[2] afterwards England,[3] the United States

[1] We do not forget one moment that in our days, as before, the share of German scholarship is preëminent in the field of ecclesiastical history. Many special periodicals, a great quantity of unequaled handbooks bear witness to the rich production of scholarly work which is continually afforded to students and theologians. We omit mentioning names; complete pages would be required to do so. We shall only point out the contributors of the *Texte und Untersuchungen zur Geschichte der altchristlichen Literatur*, edited under the direction of Ad. Harnack, von Gebhardt, and, during the first period, also of Zahn; of the *Theologische Literaturzeitung*, edited by Ad. Harnack and E. Schürer; of the *Theologische Rundschau*, under direction of Bousset; of the *Realencyklopädie für protestantische Theologie und Kirche*, the second and third editions of which have been presided over by A. Hauck; of the *Byzantinische Zeitschrift*, edited by Krumbacher; of the *Zeitschrift für Kirchengeschichte*, edited by Brieger; of the *Zeitschrift für die neutestamentliche Wisscnschaft*, edited by Preuschen and Krüger; of the *Zeitschrift für Theologie und Kirche*, edited by Gottschick; of the *Zeitschrift für Wissenschaftliche Theologie*, edited by Hilgenfeld. We ought to join the *Studien zur Geschichte der Theologie und Kirche*, edited by Bonwetsch, the *Protestantische Monatshefte*, the *Theologische Studien und Kritiken*, the *Schweizerische Theologische Zeitschrift* (edited by Meili in Zurich).

Roman Catholic theologians, on their side, took an active part in the work of ecclesiastical history, not only in former time with Moehler and with the old Catholics Friedrich and Döllinger, but also more recently with Funk, Bardenhewer, Denifle, Ehrle, Ehrhardt, etc. See also the contributors of the *Archiv für Literatur und Kirchengeschichte des Mittelalters*, the *Biblische Studien*, the *Forschungen zur christlichen Literatur- und Dogmengeschichte*, the *KirchengeschichtlicheSt udien*, the *Theologische Quartalschrift*, the *Zeitschrift für katholische theologie*.

[2] It will be sufficient to recall the names of Scholten, Kuenen, Rauwenhoff, Tiele, etc. For ecclesiastical history in Dutchland let us mention also the contributors of the *Theologisch Tydschrift*, the *Nederlandsch Archief voor kerkgeschiedenis*, the *Teyler's theologisch Tydschrift*, the *Theologische Studien*.

[3] Since the publication of the *Essays and Reviews*, in 1860, and chiefly since the spirited activity of Robertson Smith, free historical criticism has emancipated itself from ecclesiastical tradition and has taken its flight. We may mention here some names only: the Bishop of Durham, Lightfoot, Davidson, Edwin Hatch, Estlin Carpenter, Armitage, Robinson and his contributors of the *Texts and Studies, contributions to biblical and patristic literature*, the authors of the *Studia biblica and ecclesiastica* of Oxford, the contributors of the *Critical Review*, the *Expositor*, the *Hibbert Journal*, etc. The most significant example of the flight of wholly independent criticism on the field of religious history in England is the recent simultaneous publication of the *Dictionary of the Bible*, edited by Hastings, and of the *Encyclopaedia Biblica*, planned by Robertson Smith, but elaborated under the direction of T. K. Cheyne and Sutherland Black.

of America, and allow me to join without counterfeit modesty also France, where under the influence of the Ecole de Strasbourg and of Renan, foremost after the renovation[1] of higher studies since 1870, the scientific production in the field of ecclesiastical history has much increased.[2] The peculiar character of the present period is the dreadful quantity of publications of all kinds which appear every year in five or six different languages, so that it is more and more difficult to be acquainted with the ever-increasing historical production. The reproduction only of titles of the books, papers, tracts, or essays, published every year, fills a whole volume.[3] Where is, under such conditions, the man who may pretend to study by himself and directly the whole history of the church? Each of us is obliged to confine himself within the bounds of a special department of the large field, and this excessive specialization is not favorable to the education of the mind nor to the formation of historical judgment. It is of great importance that periodicals may provide for our insufficiency by publishing serious and impartial reviews of the largest possible number of new works.

This superabundance of historical contributions not only results from the extension of the area, where church history is cultivated. It arises also — and this is our second statement — from the uncontested triumph of the historical method in the religious field. Scientific concurrence not only became universal like economical

[1] To be mentioned in the Strasbourg school: Edward Reuss, Baum, Cunitz, Ch. Schmidt, Colani, de Pressensé (who followed afterwards another direction), Albert Réville, Auguste Sabatier. After the war of 1870 the French Protestant faculty of Strasbourg was transferred to Paris by Lichtenberger and Sabatier. There it has become what is called in the theological world the "school of Paris," whose most authorized representative is now Ménégoz.

[2] Under the influence of Duchesne a young school of learned and free-minded historians arose in the present French Catholic clergy, to whom belong men like Abbé Loisy, Lejay, Hemmer, Houtin, etc. There should also be mentioned the contributors of the *Bulletin Critique*, the *Revue biblique internationale*, edited by the Dominican friars of Jerusalem, the *Mélanges d'histoire et d'archéologie*, edited by the Ecole française de Rome, the *Revue d'histoire et de littérature religieuses*. See also in Belgium the *Anecdota Maredsolana* and the *Revue Bénédictine*, edited by the Benedictine friars of Maredsous, the *Muséon*, the *Revue de l'Histoire ecclésiastique*, edited at Louvain by Cauchie and Ladeuze; and with the old Catholics in Switzerland the *Revue internationale de théologie*, edited at Bern, by Michaud.

What will become of this interesting flight of free scholarship, which was inspired by Pope Leo XIII, if the spirit which seems now to be prevalent at the Vatican gets the better?

Independent of any denominational tie are in France the *Revue de l'Histoire des Religions*, the *Bibliothèque de l'Ecole des Chartes* (for medieval history), and the *Revue de l'Orient Latin*.

There is no French Protestant periodical specially devoted to ecclesiastical history; but the *Revue de théologie et de philosophie*, at Lausanne, the *Revue de théologie et des questions religieuses*, at Montauban, the *Revue Chrétienne*, edited by John Viénot, at Paris, often publish historical papers. We ought also to mention the *Bulletin de la Société de l'Histoire du protestantisme français*, edited by Weiss, and the *Annales de bibliographie théologique*, by E. Ehrhardt, in Paris.

[3] The *Theologischer Jahresbericht*, published in Berlin by the editor Schwetschke, and the *Bibliographie der theologischen Literatur*, by the same. We ought also to mention here the excellent bibliography, which appears every fortnight in the *Theologische Literaturzeitung*, edited by Professor Schürer (Berlin, Hinrichs).

concurrence, but everywhere in religious scholarship historical and critical studies became so preponderating that they have nearly displaced all others. Look at the programmes of whatever theological or higher religious school. You will certainly observe that all professors teach history or practice historical and philological criticism: the professor of dogmatic grounds his teaching upon the history of dogma, the professor of exegesis upon the history of the text or upon the historical explanation of the personality of the author, of his ideas, of his style, and so further in all branches of theological teaching.

In the department of religious science as well as in all other moral sciences, the second half of the nineteenth century has been, before all, the age of the historical method, that is, of the scientific and critical method, even with those men whose dogmatic or philosophical convictions seem to require other agents in history than the forces of rational determinism which historical criticism requires. The historian who now relies on miracle or upon arguments of a confessional kind is, so to say, disqualified amongst all those who are not imbued with the same confessional faith. So the most notorious supernaturalists and the most decided partisans take great care commonly not to ground their historical conclusions on dogmatic reasons.

Philosophical speculation is also no longer appreciated by the ecclesiastical historians of to-day. Hegel's dialectical evolutionism has been amended by that of Darwin or of Spencer, and Aug. Comte's positivism has influenced us all, even those amongst us who are not positivists. Under a myth or under a legend we want to discover the real fact which gave rise to it. The great development of experimental sciences has reacted upon moral sciences and increased the sense of reality and the need of precision. Now records are more strictly respected and the authority of duly ascertained facts has taken root in the historian's mind more deeply than before. Theories are mistrusted, even when they are supported by the most powerful dialectics. What we require essentially from ecclesiastical as well as from all other historians, if they aim at any authority for their works, is: to inquire as completely as possible after all records or testimonies, interpreting them by the most firmly established rules of philology, subjecting them to a most severe criticism, but without any prejudicial view, analyzing them minutely so as to see things as they are and not as we may want them to be; to search for truth in itself without any apologetical prepossession; to replace men of the past in their real life and not in an abstract outline; to discover for each event, for each fact, for each action of men the reason sufficient to explain them rationally and to place them in the universal concatenation of all phenomena.

Here appears another characteristic of the present conception of ecclesiastical history. It is no longer a history above the common run, of a nature different from all others, and which requires special treatment. Formerly the history of Christianity seemed generally to be apart, as a special compartment cut off from the rest of history, a sacred territory separated from the profane world. Now the progress of our general historical knowledge makes us recognize ever better that the history of Christianity — of Christian religion as well as of Christian Church — is intimately bound with the economical, moral, social, and religious history of the surrounding world. The water-tight bulkhead which separated the so-called "profane" from the so-called "sacred" studies has been removed, even for the period of the New Testament. Not only is the same method to be used in both branches, but there is no one to-day who may contest that early Christianity is connected, not only with biblical Judaism, but also with a Judaism quite permeated with Chaldæan, Iranian, and Jewish Alexandrian survivals. Every one must recognize how large is the influence of Hellenism and of Roman pagan tradition in Christianity as it became by conquering the ancient world. Nobody can overlook the eminent contribution of Germanic religion and morals in the Christian world of the Middle Ages. Christianity did not evolve of itself, by its sole proper principles, with only internal logic and without the influence of the surrounding world: its evolution was continually determined by the nature of the different societies among which it was developing and by the precedents of the people among whom it was operating.

This characteristic of our present conception of ecclesiastical history seems to me so decided that I dare to say it is plainly distinctive of our scientific situation to-day. For it implies a deep transformation of the ancient idea of revelation, even much deeper than most of the theologians think, who practice this modern historical method, although they maintain more or less of traditional doctrines of the special origins and the particular fate of the Christian religion.[1] It is not in our province here to elaborate this dogmatic side of the problem. We have only to notice it.

Thus the history of Christianity becomes a section of the general history of religions.[2] It becomes secularized. This is a capital point,

[1] When enumerating the periodicals devoted to ecclesiastical history, we observe that the distinction between Catholic and Protestant publications is still widespread. The reason is that most of these periodicals are connected with faculties or schools preparing ministers for the different ecclesiastical denominations. But their essays may claim historical authority only in the measure in which they are free from any confessional character or any theological or philosophical prejudice.

[2] We must notice the large development of the general history of religions in the last twenty years: foundations of new lectureships devoted to general religious history in Dutchland, in Switzerland, in France, in Sweden, and especially in the United States, where this movement was from the first welcomed (Everett

for it is only under that condition that it may claim its place in the cycle of sciences. Even the very programme of this Congress of Arts and Science in St. Louis is the confirmation of my statement.

To improve really our studies, we ought to push them forward in the direction so indicated. There are, at the present time, most important problems to be solved. On the one side we cannot understand the psychology of early Christianity nor its theological and ecclesiastical formation without becoming better aware of the precedent religious state of the people who became Christian, and growing familiar with the pagan world where Christianity took its historical shape. On the other hand, we cannot appreciate the religious value of the ancient Christian data without being able to compare them with other religious data of the same kind in other religions. For instance, if we want to understand the origin of Christian monasticism, it is necessary not only to know the spiritual tendencies which in the Christian Church itself drove out of the civil life such a lot of believers, but no less the parallel tendencies which were at work in the pagan society of the same time. And if we want to appreciate this great historical event, we ought to be able to compare Christian asceticism and monasticism with the similar movements in other religions, as, for instance, in Buddhism.

We ought not to be taken up wholly by little monographies. They are indeed absolutely necessary. But they are fruitless, if they remain without connection with a more general historical study. There are certainly still many special points to elucidate in the proper field of ecclesiastical history, especially in the period following the Nicean Council; but those points are generally of secondary importance. Let them be studied in a great number of careful monographies. That is excellent; that is necessary! But this dust of scholarship cannot by itself improve our scientific knowledge, if it be not worked up by men of a larger and more comprehensive mind, able to use all those little and painfully elaborated pieces of stone to make up the mosaic in which the evolution of living history is represented. Alas! that is what we most want. How few are the scholars able to join an immense learning in all details with harmonious and powerful general views, like the master at whose side I have the honor of speaking to-day!

Scientific research does not consist only in resuming ever and ever the same subjects. Beware of generalizing early and prematurely!

Warren, Goodspeed, Toy, Morris Jastrow, Jr., G. F. Moore, Nathaniel Schmidt, and many others; collection of *Handbooks on the History of Religions*). Two special reviews are devoted to these studies: the *Revue de l'Histoire des Religions*, edited, by Jean Réville in France, and the *Archiv für Religionswissenschaft*, edited in Germany by Achelis, and, since 1904, also by Dieterich. Concerning this recent development of the general history of religion, see the article in the *Revue de l'Histoire des Religions*, t. XLIII, p. 58, *sqq.*

Such generalizations are the very negation of scientific method. But let us not be afraid to enlarge the field of our researches and to borrow from the neighbors all that may enlighten our mind.

Our highest ambition should be to enlarge our historical material.[1] If there are probably no more important discoveries to make in the libraries of central and occidental Europe, except perhaps in some palimpsests [2] — there are in all likelihood still fine records to discover in Oriental countries. Till now we have thoroughly studied Christianity only in the Græco-Latin and in the Germanic world. How much remains to be done before we can know the development of this same Christianity among Oriental or Slavonic peoples! How uninformed are we still of the religious change which took place at the conversion of a great part of the Christian world from the religion of Jesus to that of Muhammad? Asia Minor, Syria, Palestine, Egypt, perhaps also Persia, certainly still conceal vast unknown historical treasures. We have to direct the scholars to that side also.

Finally I should like to account more exactly for the real sense of what I called the secularization of ecclesiastical history. The same rational and critical method, which is used in all other parts of historical scholarship must be applied to religious or ecclesiastical history: that is a fact beyond all further discussion. But to be able to apply it in this special department, you ought to know, of yourself, what is religious feeling or religious emotion. A scholar quite devoid of religious disposition will study religious history only as a deaf man might study the history of music or a blind man that of painting. He lacks the sense, which alone enables him to recognize and appreciate the inmost value of religious doctrines, rites, or institutions.

Let us not forget this: in the history of the Christian Church as well as of all other religions, the work to be done is not alone of intellectual

[1] The discovery of a document like the *Philosophoumena*, for instance, has contributed more to our knowledge of Gnosticism than all dissertations on texts already known. In the last quarter of the preceding century our historical material for the knowledge of ancient Christianity has been largely increased by the discovery of new texts, such as various *Logia Jesu*, the *Didache*, fragments of the Gospel and of the Revelation of Petrus, the Syriac Sinaitic version of the gospels, the Acts of Paul, fragments of several apocalypses and apostolic acts (for instance of John and of Peter), of Coptic apocryphal gospels, the old Latin version of the Epistle of Clemens Romanus to the Corinthians, new versions of the *Didascalia*, the Apology of Aristides, new Gnostic texts (chiefly the *Pistis Sophia*, the treatises of the Codex Brucianus, magic formulas and incantations), acts of martyrs, original texts of "libelli," writings of Hippolytus (Commentary on Daniel, chiefly) and of Methodius, fragments of Melito of Sardes, of Origenes, of Peter of Alexandria, writings of Priscillian, the Peregrinatio Silviae ad loca sancta, the History of Dioscoros by Theopistos, and numerous fragments of the Church Fathers. Moreover the writings of the Latin Fathers are reëdited in the best conditions in the *Corpus scriptorum ecclesiasticorum latinorum*, and those of the Greek Christian writers of the first three centuries are published again with all the resources of modern paleography and criticism in the *Corpus* edited under the patronage of the Academy of Sciences of Berlin.

[2] This is shown, for instance, by the discoveries of Dom Morin published in the *Anecdota Maredsolana*.

nature. You must penetrate the soul of men in the past; you must feel as living realities what was living in their mind, in their heart, in their conscience; you must lay hold not only of the dead formula but of the very spirit. We should not go back to the edifying kind of history, as practiced by the pietists or by Neander. We leave to preachers and to moralists the important duty of working up the precious lessons which history affords them. We claim only justice and truth. So long as we have not acknowledged the feelings, the emotions, even the impressions produced by a doctrine, by a religious personality,[1] institution, cult, or any other religious statement; so long as we have not caught what needs they satisfied, and to what moral dispositions they gave satisfaction; so long we may not claim to know them really. History of dogmas or of cultural observances is the intellectual notation of religious and moral experiences; as long as we have not recognized what these experiences are, we have the shell but not the nut of religion.

In different terms we ought to give more place in our historical works to religious psychology, but to a psychology large-minded and open for all forms of religious life in human kind, an unsectarian psychology, gifted with that generous sympathy which alone enables us to penetrate the inmost nature of other people and to understand even those moral experiences which are most unfamiliar to ourselves, because it makes us lay aside our own peculiarities and revive in others. Secularized ecclesiastical history ought not to be a withered history, mere anatomy. We have to present to our contemporaries, not fossils, but living beings, who have worshiped, cried for assistance, glorified, who have sung and lamented, who have trembled before the Great Mystery, who revolted and bethought themselves, who loved and prayed, — not only theologians, priests, or rituals.

[1] In religious history an important place is to be assigned to great personalities. The experience of our day as well as the most trustworthy records of the past bear witness to the intensity of the influence of certain personalities, which are productive of moral and religious life. Those who believe in some one are perhaps more numerous than those who believe in something (a doctrine, an idea, or the virtue of a practice). This is especially true in ethic religions.

SUPPLEMENTARY PAPER

A short paper was contributed to this Section by Professor Henry C. Sheldon, of Boston University, on "The Contributions of Alexandrianism to New Testament Thought." The speaker defined Alexandrianism briefly as marked by the following peculiarities: "(1) A prodigal use of allegorical interpretation, largely under the stimulus of an ambition to show the accord of the Sacred Oracles with various products of Greek philosophy. (2) Great stress upon the transcendence of God and a somewhat dualistic conception of his relation to the world. (3) Interposition between God and the world of a mediating agent, this agent being termed in Philonian phrase the Logos, and embracing in its significance the gist of the Platonic doctrine of ideas and of the Stoic doctrine of an immanent reason in the world. (4) Affiliation with the Hellenic anthropology in a disparaging estimate of the body as a clog or fetter to the spirit. (5) A somewhat abstract representation of the future life, a representation setting forth the general notion of an immortal existence of disembodied souls, and discountenancing or ignoring the idea both of a bodily resurrection and of a world crisis."

The speaker first considered at some length the possible obligation of Paul to Alexandrian teaching, but held that the resemblances are not such as to testify to any explicit borrowing, and, even where it appears, it is still to be proved that he borrowed specifically from Alexandria instead of imbibing through contact with the general sphere of Hellenic culture. On the whole the speaker agreed with the conclusion of Professor Harnack, that the writings of Paul afford very little indication of the influence of Philo. In the Epistle to the Hebrews, however, we enter into an atmosphere which bears an unmistakable tinge of Alexandrianism.

Concerning the Johannine writings the speaker concluded that while they reflect in a measure the Alexandrian, there is no good reason to suppose such a radical dependence of the one upon the other, as some writers have assumed. The author of the Fourth Gospel used the Philonean teaching not as a copyist, but as a man of strong original bent uses material from any source.

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